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STOLEN WATERS

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A PAGE IN
THE CONQUEST OF ULSTER

BY

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PREFACE.

THIS is an attempt to throw into narrative form the historical, official, and legal records of a phase of Anglo-Irish history little explored.

As to the documents: A "King's Letter" of Charles I. (24th September, 1638) as condensed in the Calendar of Irish State Papers, contains words not to be found in the original. The text printed in these pages is taken from the "enrolment" in the Dublin Record Office.

Another paper which witnesses the culmination of the frauds practised on the Corporation of London in relation to the Plantation of Ulster is so clipped in that Calendar as to yield no idea of the nature of the transaction. The original is hard to decipher in one place and the version which I have extracted from the London Record Office may be astray as to a word. If so, it is a misreading which does not affect the sense.

Other instruments here published for the first time are taken either from officially certified copies or were made by me from the originals.

In preparing for the Press, my shorthand notes were set into typewriting by my daughter Elizabeth and indeed were often bettered on the way.

Mr. Wm. M. Murphy freely printed them by his newspaper staff for my convenience, and as corrections grew, made reprints without stint.

Without their help the book could not have been brought out.

That scholarly and tireless archivist, the Deputy Assistant Keeper of the Irish Records, Mr. M. J. M'Enery, M.A., grudged me no inroad on his lore.

I was facilitated also by the officials of the Dublin Registry of Deeds, the London Record Office, and Somerset House. Thanks are likewise offered to the Librarians of T.C.D., the Royal Irish Academy, the British Museum, Hatfield, King's Inns, Gray's Inn, and of the House of Commons and House of Lords.

I hope the clues furnished in these pages may be further pursued by more leisured investigators.

T. M. HEALY.

1 Temple Gardens,
London, E.C.,
21st January, 1913.

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STOLEN WATERS.

CHAPTER I.

A SUMMARY.

THREE centuries ago a number of counterfeits were uttered by the Viceroy of Ireland. They were not bank-notes of small value, such as modern forgers engrave, but represented thousands of pounds in yearly rents. The object of their issue was to defraud the King, the City of London, and the public. They took the form of Letters Patent under the Great Seal of Ireland, and each parchment was put forth in such a way as to give it the semblance of royal authority.

For years James I. was in treaty with the Lord Mayor, Commonalty and Citizens of London to induce them to take up the Plantation of Ulster. On the strength of promises made by His Majesty they were persuaded to undertake to "plant" the territories of O'Neill, O'Donnell and O'Cahan; to spend £20,000 thereon; and to rebuild the towns of Derry and Coleraine. Instead of the £20,000 promised, the City levies exceeded £60,000. In present values, their outlay probably represented nearly £600,000. The Order of Baronets, with the "Red Hand" of the O'Neills as its device, was also established by the King to help to finance the enterprise.

A large breadth of land in Derry and the fishing of Lough Foyle, in Donegal, were ceded to the Londoners, but the most tempting part of the promised consideration was the fishery of the River Bann. As to this the King's word was broken and the men of London were defrauded. The Bann was the

pearl of the adventure; but the Lord Deputy of Ireland, Sir Arthur Chichester, robbed them of their bargain, and annexed the river for himself. This was done despite the most solemn and formal engagements between the King and the Corporation. Instead of the terms for which they contracted being fulfilled, they received in lieu of a river thirty-two miles in length, a three-quarter share of the tidal fishing, about three miles long, and of much smaller value.

The Bann is still in the hold of the Deputy's descendants. From 1608 until this day the Londoners, with their genuine Patent, have been excluded from the fresh-water portion of the river, while by force of a fraudulent Patent it remains the property of Chichester's family. In 1872, by the payment of a huge ransom, a share in the non-tidal Bann was acquired by the "Irish Society" representing the London Companies.

Lough Neagh, from which the river issues—the largest and most fishful lake in the Three Kingdoms—was also appropriated by Chichester without royal sanction. Since the Norman invasion until 1911 it was as freely availed of by the public as the open sea. Now they have been declared to be legally excluded from its enjoyment in the interests of the Deputy's descendants. Three hundred years elapsed before the original design of Chichester was fully consummated. To-day the parchments fabricated by himself and his heirs affect the lives and earnings of a large population.

The figures in the drama move chiefly in the days of James I., Charles I., Cromwell, and Charles II.; but its action traverses successive reigns. Beginning with the Stuarts, it closes only with the accession of his present Majesty, George V. The story has hitherto lain buried in disconnected State Papers. When compacted together it is one so extraordinary that the facts would be incredible if they were not proved under the hands of the guilty officials themselves.

How were the intentions of James I. overridden? How were the Londoners defrauded? How were the native Irish victimised? Principally by means of Letters Patent, framed in Dublin, sealed by the Deputy in his own favour, with the connivance of his Law Officers. The King was kept in ignor-

ance of their stealths. The affixing of the Great Seal to the principal grants having taken place without Royal assent or privity, they were a mere embezzlement of the Crown. Only great skill and daring, united to unlimited executive power, made Chichester's achievements possible.

A web of pretence was woven by cunning brains to suggest that the grants he obtained were all of Royal grace. But once the clue is obtained from the Patent Rolls and State Papers the crimes of the Deputy no longer lurk in shadow, and the clauses of his grants serve to form the counts in his indictment. Yet so daring was he that his procedure cannot be surveyed without some touch of that admiration which the vulgar bestow on the feats of Dick Turpin and Jack Shepherd. Amongst the able men who wrought the overthrow of Celtic power in Ireland, Chichester was the ablest.

He died in 1625, and fifteen years afterwards an equally masterful Viceroy, Wentworth, Lord Strafford, compelled his heir to surrender the stolen waters, and re-convey them to Charles I. But the work of Strafford was undone at the Restoration ; and craft again triumphed over law. Strafford's head was taken off on the testimony of those whose plunder he had checked, and the intrigue for the re-capture of the fisheries from the Crown re-commenced. The rebellion of 1641 made the O'Neills of Ulster once more masters in the North, and royal authority lapsed for many years. Then Ireland was reduced by Cromwell. In 1656 the Protector rented Lough Neagh to one of his acolytes, Sir John Clotworthy, and ordered that its waters should be leased to him for 99 years. Disobeying Oliver's directions, the Dublin Council of the Commonwealth (including Cromwell's son Henry) surreptitiously added to Clotworthy's lease a grant of the Bann, which Cromwell himself had agreed to restore to the city of London. The details of this intrigue, most curious in their workings, have hitherto escaped the notice of historians. They provide a key to the hitherto-unsolved riddle of the loss of the river by the Londoners, in spite of three Charters assuring it to them—including one from Cromwell himself.

At the Restoration, Charles II., bereft of disinterested counsellors in Irish affairs, confirmed Clotworthy's unlawful lease. Thereupon the third Chichester (become Lord Donegall) deceived the King into executing to himself a grant of the reversion, on the expiry of Clotworthy's lease, by a pretence more barefaced than that by which his predecessor tricked James I.

This Patent for generations lay unasserted as regards Lough Neagh. Charles II. was known to have been grossly misled when he gave back the fisheries to the family from whose grasp Strafford had rescued them for Charles I. Only when time had dimmed the memory, and rendered obscure the procedure of Stuart days, were Judges asked in the twentieth century to hold the Patent for Lough Neagh a valid grant.

In the reign of George V., a divided House of Lords, after two hearings, reversed the decision of a previous House in 1878, which had upheld the rights of the public. On Friday, 14th July, 1911, against the protest of the Lord Chancellor, it was decided by a majority of a single vote that Charles II. had transferred Lough Neagh into private hands (1911 A.C., 552). A notable parchment cited to implement the transaction, was pronounced a forgery by one of the Law Lords.

The Bann, by mere neglect, had previously passed to the Chichesters, in spite of the Charters of 1613, 1656, and 1662, which conferred it on the Corporation of London. How was all this contrived ? By what agencies was the law set on the side of the despoiler ? What materials had the Courts for their decision, and did the House of Lords in 1911 pronounce the last word of justice ? In the tract of centuries through which the tribunal trod were any records of olden days overlooked or forgotten ? Could the misfortune of a division amongst the Lords of Appeal on Party lines have been averted by fuller information ?

To marshal the materials necessary to answer these questions, new channels of inquiry have been explored and fresh clues unearthed. The pursuit, if not exhaustive, has not been without pains. A trail three centuries old is hard

to follow. Records are sometimes missing, and the scent is often stale. Here, however, nothing that could assist the candid has been consciously withheld. To supply what has hitherto been omitted, to create an enlightened opinion, to summon back to the censures of equity the wrong-doers of forgotten reigns, to note how stood the times which made their success possible, to scrutinise the devices and instruments of the conspiracy—haply also to spur to life the deadened sense of a still-existing public authority, which can repair the mischief—such is the object of these pages.

CHAPTER II.

THE TUDOR SWAY.

When James I. came to the Throne of the United Kingdoms the territory watered by the Bann had just been brought under English rule. Until Tudor times Ulster was independent, and the struggle with the O'Neills, who governed it, was long and stern. How straitened was English jurisdiction in sixteenth century Ireland, can best be realised from the Statutes of Henry VIII. Until his reign the Kings of England were only "Lords" of Ireland; and even their title of "Lord" was not acknowledged except in a small part of the island. In 1522, when Henry VIII. had been thirteen years on the throne, his authority extended over only four counties, as the Irish Statutes show.

In an Act "Touching Jurors" (13th Henry VIII. c. 3) the recital is that—"Right few persons within the four shires where the King's laws is occupied in this land" are qualified to act as jurors. The "four shires" were Dublin, Meath, Kildare, and Louth, but Dublin then included a part of Wicklow, and Meath a part of Westmeath.

An Act of 1537 (28th Henry VIII. c. 11) restrains the payment of tribute to Irish Chiefs, though it refrains from explaining that the Crown itself had yielded such tribute. Another Act of 1537 (28th Henry VIII. c. 15) shows that even in the "four shires" Irish customs prevailed—"For the benefit of his Grace's subjects in this part of this his land of Ireland that is called the English Pale. . . . All men that will acknowledge themselves, according to their duties to allegiance, to be His Highness's true and faithful subjects, must use the English tongue, and shall not be shorn or shaven

above the ears, or use the wearing of hair upon their heads like unto long locks called glibs, or have or use the wearing of hair upon their upper lips, called or named a crommeal."

Then came the Act of 1542 (33rd Henry VIII. c. 1), by which, for the first time, the Kings of England were empowered " to have the name, style, title and honour of Kings of this land of Ireland." He was so proclaimed on 23rd January, 1542-3 (W., 133), but the royal jurisdiction still did not extend beyond the " four obedient shires."

The Act " Concerning Jurors " (33rd Henry VIII. c. 4), passed the same year (1542), discloses the narrow limits of the English sway—" Whereas the King's obeysant English subjects of this land, either by consanguinity or affinity, which is so universally spread betwixt them, by reason that they are inhabited in so little a compass or circuit, and restrained by Statute to marry with Irish nation, and therefore of necessity must marry themselves together." It then enacts that consanguinity or affinity, not within the fifth degree, shall not be a ground for challenging jurors.

The 33rd Henry VIII. c. 1, session 2 (1542), was passed for his " obedient shires." The hinterland was inhabited by " Irish enemies." The Parliament which made Henry VIII. King was necessarily a small and unrepresentative body. The Commons consisted probably of eight county members, with a score of Burgesses, and the Lords were a few " Palesmen " of English blood with a sprinkling of native chiefs. O'Neill, Prince of Ulster, objected to the assumption of regality by Henry VIII., and one of the objects of the measure was to assert an overlordship which O'Neill must acknowledge. Ireland then occupied, in the eye of Europe, a larger space than that to which she has now shrunk ; and Henry, having shaken off the jurisdiction of the Pope, was proud to be invested by statute with the sovereignty of the island. It was in right of Ireland that his predecessor, Henry V., secured, at the Council of Constance, precedence for his Ambassador over the representative of France—after learned argument which decided the Kingship of the Gael to be the third most ancient in Europe, coming after Rome and Constantinople (F.D. and C.I. 32).

On similar grounds, in the reign of Henry III., the Archbishop of Armagh signed the roll at the Council of Lyons in priority to the prelates of France, Spain, and Italy. Henry VIII. needed soldiers for his wars, and knew the mettle of the kerns. "These be the men," wrote his Deputy, St. Leger, "that do not lightly abandon the field, but abide the brunt to the death." In 1544 he sent 700 of them to garrison Calais, by Henry's order, where "they were very serviceable, and did much mischief to the French" (Cox, vol. i. p. 277).

The statute which made Henry VIII. King of Ireland gave him legal title to fealty and homage from every Celtic Chieftain. In this respect its purpose was successful, for in 1542 Con O'Neill (the Lame) agreed to acknowledge Henry VIII. as Sovereign, and to visit England to receive the title of Earl. At Greenwich Con surrendered; and there he took a re-grant of his territory, and was created Earl of Tyrone. The particulars of the ceremony are quaint enough:

"Sunday, 1st October, 1542, at the Manor of Greenwich, Con O'Neill was created Earl of Tyrone, in the manner and form following:

"The Queen's closet at Greenwich was richly hanged with cloth of Arras, and well strewed with rushes, and after the sacring of the High Mass, these Earls in company went to the said closet, and there put on their robes of estate. And immediately after, the King's Majesty being under the cloth of estate, accompanied with all his noblemen, council, and others, came in the Earl, led between the Earl of Oxenford and the Earl of Hertford, the Viscount Lisle bearing before his sword, the hilt upwards, Garter before him bearing his Letters Patent, and so proceeded to the King's Majesty, who received of Garter the Letters Patent, and took them to Mr. Wriotesley, Secretary, to read them openly. And when he came to 'cincturam gladii' the Viscount Lisle presented unto the King the sword, and the King girt the said sword about the said Earl baudrickwise, the aforesaid Earl kneeling, and the other lords standing that led him. And so, the Patent read out, the King's Highness took him his Letters Patent, and he gave him this in his hand, and a priest made answer of his saying, in English, and there the King made

two of the men that came with him Knights. And so the Earls, in order aforesaid, took their leave of the King's Highness, and departed into the place appointed for their dinners, the Earl of Tyrone bearing his Letters Patent himself, the trumpets blowing before him, on to the chamber which was the Lord Great Master's, under the King's lodging. And so they sat at dinner. At the second course, Garter proclaimed the King's style ; and after, the said new Earl's, in manner following :

" ' Du très haut et puissant Seigneur Con, Comte de Tyrone en la Royaume d'Irlande.'

" He gave unto Garter, for the fine of his gown, 20 angels, and to the whole Office of Arms £10, and so to Trumpets 40s., and other officers were honourably rewarded, according to the old and ancient custom " (C. MS., 199).

Burleigh, ancestor of the Cecils, first came into notice as a young man at this function, by the cleverness of his arguments respecting Papal supremacy with the Bishop of Clogher, who acted as interpreter for Con O'Neill (Mn. and Cox, vol. i. p. 275).

Henry VIII. was well pleased with the homage and submission of the O'Neill, and wrote an account of it to Dublin from Greenwich the following Sunday to the Lord Deputy (8th October, 1542) : " Informs him that upon the submission of O'Neile, he (the King) created him Earl of Tyrone, and gave to his son Matthew, and his posterity, the honour and name of Baron of Dincannon (Dungannon), and for his reward a cheyne of £60 and odd, furnished his robes, and paid the charges of his creation, £65 10s. 2d., and gave him in ready money £100 ; and that, as to the rest of those that came over with him, M'Guyer was knighted, and received in ready money 100 marks ; Arthur Guynnes was also knighted, got £50, and obtained his suit that the cell of Newry should be converted into a College of secular priests ; that his Majesty had accepted the submission of the Bishop of Clogher, with the surrender of his Bulls, and re-appointed him with £40 in money ; and directing the Master of Anee should be preferred to the Bishoprick of Enolye ; and that O'Donnell's chaplain should have the Bishoprick in the

North; and declaring the King takes in good part the coming of O'Brien, O'Donnell, the Baron of Upper Ossory, the Lord FitzWilliam, and the rest of the Irishmen, in the beginning of the ensuing year" (M., 79).

O'Neill having submitted, influential Southern nobles came to Greenwich the following year, and took out English Patents for their estates (W., 142, C.S.P.).

Whether by choice or statecraft, the succession to Con's new title and territory was limited upon an illegitimate son, Matthew. This struck at the law of tanistry, by which the people had the right to select the worthiest scion of the O'Neills, to succeed Con at his death. As Ulster knew only the Brehon Code, the frame of the Patent outraged the sentiment of a powerful clan by favouring one baseborn, and created doubt amongst O'Neill's vassals. Worst of all, it assumed that the territory surrendered by Con, and re-granted by Patent, was the fee-simple of the Chief—a doctrine repugnant to Celtic law. Lastly, it rendered acute in Ireland questions of legitimacy which, owing to the divorce of Henry VIII. from Queen Katherine, had begun to perturb England.

The result was that Con's ablest legitimate son, Shane, slew Matthew, and on his father's death in 1559 was elected by the tribesmen Chief of the O'Neills, according to the Brehon Code. He then ruled Ulster in complete independence, and defied royal authority.

Elizabeth's Deputy, Sidney, called a parley with Shane, and was politely invited to stand sponsor for one of his sons. The Deputy consented, and the baptism took place on the 31st January, 1559. "Gossipred" was the closest tie recognised by the Celts. "Fostering," wrote Sir John Davies, Attorney-General for Ireland under James I., "hath always been a stronger alliance than blood. . . . Such a general custom in a kingdom, of giving and taking children to foster, making such a firm alliance as it doth in Ireland, hath never been seen or heard of in any country in the world besides."

Sidney, after the baptism, made bold to reprove Shane for his naughtiness in refusing to allow his territory to be made shire-ground. O'Neill's reply, as reported by Sir Richard

Cox (afterwards Chancellor) is historic, and bears closely on the questions which this story unfolds. Quoth Shane:

"In the first place, Matthew was a bastard; that, anyhow, he could not derive a title from their father, Con O'Neill's surrender to Henry VIII., for that Con's surrender was void, because he had but an estate for life in his principality; nor could have more by the law of tanistry; nor could surrender, but by the consent of the lords of his country; and that, even by English laws, the Letters Patent were void, because there was no Inquisition taken before they were passed; nor could there be any Inquisition until the County of Tyrone was made shire-ground. That he was elected O'Neill by the nation, according to custom; that he was the legitimate son and heir of his father; and, lastly, that his title to all his claims is by prescription" (Cox, vol. i. p. 312).

Prince Shane, whom Froude styles a "savage," had a surprising acquaintance with the elements of the English law of real property as it then existed. Froude knew so much less about it than Shane, that he commits the blunder of making Cecil write of "*offence* found" instead of "office found" (H. E. F., vol. x. 232, and vii. 148).

On the 6th January, 1561-2, Shane visited Elizabeth in London, where the Queen's advisers were much disturbed over the conflicting title to Tyrone created by Con's Patent. Under it Hugh O'Neill, son to the murdered Matthew, who had been brought up at her Court, was entitled to succeed. Therefore Her Majesty, "because the Baron's son is absent in Ireland, abstains from deciding to whom the rule of the country belongs"; and she "committed to O'Neill the rule and government of O'Cahan's country, and other places infested by the Scots" (C. MS., 312). That is, "O'Neill was to reduce the Scots, and the Queen granted him the government of the district he was to acquire" (R. L., 296).

The year before this visit, Cecil, by way of "objection and answer," wrote on the situation created by Con's Patent thus:

"Objection. The offence and the forfeiture would have been inquired of and found by order of law, and so being in record, the grant of the King should have been grounded upon the record, but lacking that order, the grant is void.

" Answer. That form of procedure is requisite where the land is ruled by officers thereto requisite, as an Escheator and Sheriff; but where the law was not used, nor such officers had any being, then must the King's title be taken as it may be, and the grant of the Earldom is a matter of record at this day" (C. MS., 287, 292, 304).

Shane left London dissatisfied, but, as he could not be subdued, he received, on the 18th November, 1563, Letters Patent whereby the Queen pardoned all his offences, and declared that: " He shall remain captain or governor of his territory of Tyrone, and shall have the name of O'Neill, and all the jurisdiction and pre-eminences which his ancestors possessed, with the service and homage of the lords and captains of the O'Neill country, and be created Earl of Tyrone." The Lord Deputy tried to find a shorter solution of the problem by sending Shane some bottles of poisoned wine, which, however, failed to kill (H.E.F., vol. vii. p. 156).

The refusal of the Irish Chiefs to allow their territories to be " shired " sprang from the instinct of self-preservation. They were ready to acknowledge the King; but, once Sheriffs were admitted, " the State " could confiscate their lands, by means of the machinery of Inquisitions taken by Sheriffs and Escheators. Many Statutes attest that the reputation of the Sheriffs and Escheators in the sixteenth and seventeenth centuries was anything but fragrant. So Shane O'Neill held out in an independent Ulster until his death at the hands of the MacDonnells of the Isles, in 1567.

The folk who slew Shane came from the Hebrides, but centuries earlier their chieftains obtained a foothold in Co. Antrim where in Tudor times they took Dunluce Castle from the MacQuillans. A Statute of Queen Mary (3 and 4 P. and M., c. 15) made it an offence punishable by death to bring in " Scots men of war " or to intermarry with the Scots, without licence of the Deputy under the Great Seal. Sometimes the MacDonnell clan supported the English, and sometimes the Irish, but mostly the King of Scots. Having murdered Shane, the Hebrideans sent his head to the Deputy. " They sent me his head pickled in a pipkin," wrote Sidney to Walsingham, " and craved their reward "

(C. MS., 342). Sidney ungently spiked the skull of his "gossip" on the walls of Dublin Castle "bodied with a stake," and chants of sorrow surged up from Tyrone.

The Government then placed on the roll of Parliament the most fantastic Statute in Irish History. This was the famous Act 11th Elizabeth, c. 1 (1569), passed two years after Shane's death. In repugnance to the spirit of the English common law, a *post-mortem* attainder was enacted against Shane O'Neill, whose skull grinned down in mockery of the assembly which defamed him. The Act declared that Queen Elizabeth, her heirs and successors, "should have, hold possess and enjoy the country of Tyrone," with other unspecified "countries" held by Shane's vassals (probably in Armagh and Monaghan), that "all the lords, captains, and people of Ulster shall be for ever exempted and cut off from all rule and authority of O'Neill; and the name of O'Neill the manner and ceremonies of his creation shall be utterly abolished and extinct for ever"; and that it should be high treason to take the name of O'Neill.

The Act recites that, after Shane's death, his brother Turlough (Lynagh), whom "the country had elected to be O'Neill and all the rest of the said lords and captains, came, of their own voluntary accord, into the presence of your Majesty's Deputy, being then in Ulster," and made their submission and swore allegiance "with solemn oaths and humble submissions in writing." It therefore enacted that they "should receive such portions of their countries to live on by English tenure as to your Majesty shall seem good and convenient, in the distribution thereof your Highness's Deputy is best able to inform your Majesty."

Turlough was elected by the O'Neills in 1567, and the Queen made a treaty of peace with him on the 20th January, 1570 (C. MS., 404). The Irish Statutes were put in print for the first time in Henry VIII.'s reign (C. MS.); and it seems unlikely that the Act of 1569 was published or communicated to Turlough. Certainly during Elizabeth's lifetime no attempt to enforce it in Tyrone was made. The forfeiture of land by Statute, unless the Act also abolished the necessity for "office," did not vest a subject's property

in the Crown forthwith. The law required the fact of forfeiture to be investigated by and established before a jury, who should find that the ownership of the land in question was in the felon, and declare the limits and boundaries of his possessions. This was called an inquest of " office." There were two such inquests usually—an " office " of " entitling " in the first instance, and then if the title was found to be in the Crown, one for boundaries. When a verdict was returned into the Exchequer, it might be challenged by anyone interested, and only after a given interval and ceremony were forfeited lands set " in charge " to the Crown. On the Irish monasteries being seized by Henry VIII., and in many other cases of statutory confiscation, the Acts expressly dispensed with the finding of " office." No such exemption in favour of the Crown is contained in the 11th Elizabeth, c. 1. From its very framework, confiscations could not have been validated under it without local inquisitions.

The English Statutes regulating the process of confiscation were applied to Ireland in the reign of Henry VII. by Poynings' Law. They were passed to enforce the provisions of Magna Charta, so that no man should be deprived of land by the King, save by a jury of his peers. Hence the Act of 1429 (8th Henry VI. c. 16) took effect in Ireland.

"For that lands and tenements of many of the King's liege people be seized into the King's hands upon such Inquests, or let to farm by the Chancellor or Treasurer, before such Inquests be returned in the Chancery, no lands or tenements, seized into the hands of our Lord the King, upon such Inquests taken before Escheators or Commissioners, be not in any wise let or granted to farm, by the Chancellor or Treasurer of England or any other the King's officer, until the same Inquests and verdicts be fully returned in the Chancery or the Exchequer. If any Letters Patent of any of the lands or tenements be made to the contrary to any other person, or let to farm, within the said month, after the said month of return, they shall be void and holden for none."

An Act of 1439 (18th Henry VI. c. 6) which strengthened this provision, declares : " No Letters Patent shall be made to any person or persons, of any lands or tenements, before

Inquisition of the King's title in the same be found in the Chancery or in his Exchequer returned. If the King's title in the same be not found of record, nor within one month after the same Return, if it be not to them or him that tender their traverses, as afore is said, and if any Letters Patent be made to the contrary, they shall be void and holden for none."

Confiscated lands did not, therefore, become vested in the Crown without solemn form. Similarly, once they became the King's, they could not be divested or conferred on a subject, without equally solemn form. Such forms were punctiliously acted on, and were familiar to every lawyer and Patent-scribe of that epoch, not to say every land-owner. They were especially well known to the Law Officers of the Crown. The constant crop of confiscations in Ireland in the sixteenth and seventeenth centuries kept the lawyer's practice as certain, as is to-day the ordinary routine of the Royal Courts of Justice.

A wide clause of exemption in the inept Act of 11th Elizabeth enabled the Viceroy to relieve the Chiefs and clansmen from its operation, and it also did not apply to a number of specified persons of "meer and natural English blood and name." In any case, it never could have taken effect in forfeiture, without the legal preliminary of "office found" to ascertain the estates and owners affected. "Offices," if taken, were of record in the Courts, carefully preserved, and easy of access. Verdicts genuinely found (and some that are forged) can, after several centuries, be traced without difficulty. None, however, exist (forged or genuine) to warrant a Patent of the Bann and Lough Neagh, before a pretenced grant made in 1605. If these waters were within the territory affected by 11th Elizabeth, that fact should have been established and declared by verdict within the local venue. This was never done, nor was it even alleged to have been attempted.

Besides, by Henry VIII.'s Patent to Con O'Neill, his lands descended, on the death of Matthew, to Matthew's son Hugh, and Shane O'Neill had no estate in them, which English law regarded as capable of being confiscated.

CHAPTER III.

THE CASE OF SMITH AND SON.

The O'Neills, being of the "Five Bloods," were not "alien enemies" by birth, but were entitled to the benefit of English law. Sir J. Davies' Reports—"Case of Tanistry"—show that Englishmen recognised that five of the Irish clans were to receive like justice in the Courts with themselves. These were the O'Neills, the O'Connors, the MacMurroughs (now Murphys), the Melaughlins, and the O'Briens. Before, therefore, any of the O'Neill territory could be escheated, every legal formality should have been fulfilled. Indeed the Act 11th Elizabeth recites that the O'Neills were not in rebellion when it became law. Turlough O'Neill governed a district which corresponded to the present counties of Tyrone, Derry, Armagh, and part of Monaghan. Shane O'Neill's sway had extended to parts of Antrim and Down. The River Bann and Lough Neagh separate the latter territories from Tyrone. The extended dominions claimed by Shane east of these waters included the Claneboys and Ardes; but Elizabeth set up Sir Brian MacPhelim O'Neill as Chieftain of Claneboy, and he did stout battle for her Majesty. The passing of the Act 11th Elizabeth misled or infatuated the Queen, who, in bad faith towards Sir Brian O'Neill, made a contract with her Secretary of State, Sir Thomas Smith, to occupy East Ulster. On the 5th October, 1571, she entered into Indentures with Smith (as if they were parties privately contracting) that he and his natural son should set out and conquer the Claneboys. Letters Patent ratifying this bargain were passed under the Great Seal of England on the 16th November, 1571.

Apart from other objections, this procedure was opposed to the spirit of Anglo-Irish legislation. An Act of 1517 (7th Henry VIII.) forbade the practice of "pursuing the King's Privy Seals" into England for Irish causes. The Statute was well known, being singular in this respect, that it was passed in the first Irish Parliament in Henry's reign, and was the only Act passed in that Parliament, which had been specially convened to deal with this mischief; and no other Parliament was called for six years afterwards. Perhaps Elizabeth's use of her "Great Seal of England," as distinct from her "Privy Seal," was not strictly within the mischiefs of the Act of 1517; though certainly its spirit was contravened. This Statute did not nullify Irish grants sealed in England, as they would have been regarded in Ireland as illegal in any event; but where the lands of a friendly ally were concerned, the Queen should have had regard to it, seeing that Sir Brian O'Neill's chiefry had been set up by herself.

On the 6th March, 1572, Sir Brian wrote to the Deputy from Belfast (in Latin) declaring that, had Elizabeth known of his sacrifices on her behalf, she would not have given away his lands; and that Smith's grant must be cancelled. He afterwards sent a Latin appeal to the Queen herself (from Carrickfergus) informing her that the Ardes had belonged to his ancestors "for fourteen descents," and insisted on a recall of the Smith contract.

Hearing that the Smiths had issued a printed prospectus for the Plantation of his territory, Sir Brian again protested to the Privy Council on the 27th March, 1572. His remonstrances were now in plain English, but they were without effect; so he went into revolt in 1574. Naturally he made war on the Smiths, whose project ended in disaster. Their grant lapsed and afterwards was declared void. Yet this contract is relied on as the origin of Crown title to East Ulster. It is the parchment put forward to explain the alleged gift from the Crown to Chichester of Lough Neagh and the River Bann. The Patent was not passed under the Great Seal of Ireland, nor ratified by any Statute. Nevertheless, as it is the source of much Ulster history, let

us study the bargain made between Elizabeth Tudor and Messrs. Smith and Son. It concerns a grant of 144,000 acres (*i.e.* 1200 plowlands each containing 120 acres), without reckoning wastes or woods—and any other territory that could be won from the natives :

"THIS INDENTURE made the 5th day of October in the 13th year of the reign of our most excellent Princess Elizabeth etc. Between our said Sovereign lady the Queen on the one part and Sir Thomas Smith Knight and Thomas Smith son to the said Sir Thomas one of her Majesty's pensioners within her realm of Ireland on the other part. Witnesseth that whereas there had been in her Highness's Earldom of Ulster in her Highness's realm of Ireland divers parts and parcels that lieth waste or else be inhabited with a wicked barbarous and uncivil people some Scottish and some wild Irish such as lately were rebellious to her Highness and commonly are out of all good order and as yet were in continual rebellion, her Majesty considering how great a benefit that should be to her realm of Ireland, honour and commodity to her Majesty her heirs and successors to have the same peopled with good and obedient subjects who should acknowledge the great benefits of God, her Highness Royal authority, and be a force at all time to aid her Majesty's Deputy or other officers to repress all rebels and seditious people and be an occasion by their example to bring the rude and barbarous nation of the wild Irish to more civility of manners, hath often desired and wished that some such occasion might be offered.

Whereupon the said Sir Thomas Smith and Thomas Smith his son being willing to employ themselves in her Highness's service and moved with a fervent zeal to bring so good and godly an enterprise to pass have made humble suit unto her Majesty that it would please her Highness to accept their offer of service and are contented to covenant promise and conclude and by these presents do covenant conclude and promise to and with our said Sovereign lady the Queen her heirs and successors that the said Thomas Smith the son with his and their friends followers and adherents upon their own

costs and charges with the travail of their bodies and the peril of their lives the licence and authority of her Most Excellent Majesty her heirs or successors thereunto first had and obtained shall enter into the said Earldom of Ulster with a power of natural Englishmen and her Majesty's faithful subjects to subdue and repress all rebels which be now or hereafter shall be in the great and little Ardes in Claneboye which lieth south the castle called Belfast so to the Abbey or Priory called Masserine the castles called Castle Moubray and Castle Toome and to repress all rebels which now be or hereafter shall be in the other countries continently adjoining to them [and shall be granted ?] so much as shall amount unto twelve hundred ploughlands besides woods bogs and wastes and shall from time to time do his and their best and uttermost endeavour to subdue repress expel or bring into her Majesty's mercy all rebels which now are or hereafter shall be within the countries and limits before mentioned which thing being done and brought to pass the said Sir Thomas Smith the father and Thomas the son do also covenant to plant and settle in all those places true and faithful subjects so soon as the time will conveniently suffer them.

And to the end that all such as shall be partakers in this good and godly enterprise either hazarding themselves to serve on foot or horseback at their own charge or aiding him with men and money towards the furthering thereof should be accordingly recompensed, the said Sir Thomas Smith the father and Thomas Smith the son do further covenant conclude and promise to and with our said Sovereign Lady her heirs and successors to divide the said lands and countries unto such as shall at their own charges either hazard themselves with the said Thomas the son or otherwise aid him with men or money in this aforesaid enterprise giving to everyone and to his heirs that shall at his own charge serve on foot or find one footman one ploughland to hold to him and his heirs of the said Sir Thomas Smith and Thomas his son and their heirs by the hundredth part of a Knight's fee and by such rents and other duties as the takers shall be contented to accept the same and to everyone that shall at his own

charge serve on horseback or find one horseman two ploughlands.

To hold to him and his heirs of the said Sir Thomas and Thomas Smith his son and their heirs by the fifth part of a Knight's fee and by such rents and other duties as the taker shall be contented to accept the same every such ploughland to contain six score acres of arable land and every such acre to contain four poles in breadth and forty in length every pole to contain twenty and four feet of the English standard in length.

And the said Sir Thomas Smith the father and Thomas Smith the son for them and their heirs do covenant and conclude to and with our said Sovereign Lady the Queen her heirs and successors from the 28th March 1579 to have in a readiness within the said countries and lands to serve in defence of the same at the inhabitants' costs and charges for every such ploughland or 120 acres arable land one sufficient able English footman soldier well armed and furnished for the war after the manner of England or else for every such two ploughlands or 240 acres arable land of such measure as is before expressed one sufficient able English light horseman soldier well horsed armed and furnished for the war after the manner of England and the said Sir Thomas Smith the father and Thomas Smith the son for them and their heirs covenant and conclude that at every general hosting they upon fifteen days' warning shall have ready to attend upon the Deputy of Ireland for the time being with sufficient leaders and captains the third part of all such horsemen and footmen as by their tenure they shall be bound to find within the said countries and lands to serve the Queen's Majesty her heirs and successors under the said Deputy in any part of the Earldom of Ulster during the space of forty days at his and their own costs and charges.

And further that neither the said Sir Thomas Smith Knight Thomas Smith his son nor their heirs nor assigns at any time hereafter shall give grant bargain sell alien or by any ways convey and assure to any mere Irish or to any Scottish Irish person or persons any estate of freehold and inheritance or any longer and greater estate than for five years

in any the castles manors lordships abbeys priories lands tenements and other hereditaments situate lying or being within any the said country or countries or any parcel thereof or any rent fee annuity office or other profit to be issuing or going out of the premises or any other part thereof without the special licence and Royal Assent of our said Sovereign Lady the Queen her heirs and successors thereunto obtained in writing under her Highness's great and privy signet.

And also that neither the said Sir Thomas Smith the father and Thomas Smith the son their heirs and assigns shall at any time hereafter marry to or with any mere Irish or Scottish-Irish person without like licence and assent of our said Sovereign Lady the Queen her heirs and successors first had and obtained in writing as above said. And the said Sir Thomas the father and Thomas the son do covenant and conclude for them and their heirs by these presents to and with our said Sovereign Lady the Queen her heirs and successors that they nor any of them shall not give or convey any the lands or tenements in the said realm of Ireland otherwise than under like conditions of not marrying themselves their heirs or assigns with any of the mere Irish blood or Scottish-Irish and likewise under such conditions of not alienating to any such mere Irish or Scottish-Irish person any the lands or tenements to be granted conveyed or aliened by the said Sir Thomas and Thomas as is aforesaid.

In consideration whereof and to the intent that this godly desire of peopling the said Earldom of Ulster may have the better effect and more honour the Queen Majesty is contented and pleased and for herself her heirs and successors doth covenant promise and grant by these presents to and with the said Sir Thomas and Thomas and their heirs to give and grant *as much as in her is* unto the said Sir Thomas Smith Knight and Thomas Smith his son all the manors lordships castles monasteries abbeys priories colleges free chapels chauntries rectories parsonages messuages houses buildings lands tenements meadows waste grounds forests chases parks warrens waters lakes fishings commons heaths moors marshes mines rents reversions services villeins neifs Knight's

fees wards marriages reliefs escheats tithes advowsons liberties franchises profits commodities emoluments with all other hereditaments whatsoever to our said Sovereign Lady the Queen by inheritance attainders Acts of Parliament or by any other means belonging or appertaining unto her or that of right ought to come belong or appertain unto her Majesty in the Great and Little Ardes in that part of Claneboy which lieth south of the Castle of Belfast so to the Abbey of Masserine and to the Castles called Castlemoubray and Castle Toome and all those castles called Castle Toome Castlemoubray and Belfast the Abbey or Priory of Masserine.

And further the Queen's Majesty is contented and pleased and for her heirs and successors doth covenant promise and grant by these presents to give and grant *as much as in her is* unto the said Thomas Smith the son all such other his manors lordships castles monasteries abbeys priories colleges free chapels chauntries rectories parsonages messuages houses buildings lands tenements meadows waste ground forests chases parks warrens waters lakes fishings commons heaths moors marches mines rents reversions services villeins neifs Knight's fee wards marriages reliefs escheats tithes advowsons profits commodities emoluments whatsoever they be with all other hereditaments in the said Earldom of Ulster as the said Sir Thomas Smith or Thomas Smith his son their heirs or assigns shall at any time before the said 28th day of March 1579 *happen to recover obtain or win upon the wild Irish* and inhabitants as aforesaid, all manner of mines of gold silver and copper to her Majesty her heirs and successors always excepted and reserved

To Have and to Hold all the said manors lordships castles monasteries and all other the premises before covenanted to be granted by our said Sovereign Lady unto the said Thomas Smith Knight and Thomas Smith his son and to their heirs for ever to the use and behoof of the said Sir Thomas Smith Knight and Thomas Smith his son and the heirs of the body lawfully begotten of the said Thomas the son and for default of such issue to the use of the right heirs of the said Sir Thomas the father for ever to hold of our said Sovereign Lady the Queen her heirs and successors as of

the Castle of Knockfergus in the said realm of Ireland by one whole Knight's fee yielding and paying unto our said Sovereign Lady the Queen her heirs and successors for every ploughland or six score acres arable land of the measure above-mentioned twenty shillings Irish, yearly to be paid into her Highness's Exchequer in Ireland at the Feast of the Annunciation of Our Lady and at the Feast of St. Michael by even proportions the first payment to begin at the Feast of St. Michael which shall be in the year of Our Lord God 1576.

And furthermore her Majesty of her abundant goodness do covenant and grant to and with the said Sir Thomas and Thomas Smith for the more assurance of the premises forthwith to make grant of her Majesty's Letters Patents according to the true intent of these presents and to grant out commission to the said Thomas Smith the son to invade the said countries with armies power and force of men being entertained by himself without disturbance or let of any her Majesty's officers sufficient and effectual for the accomplishment of the premises the same commission to endure and continue in force for the space of seven years after the 28th of March next ensuing,

Provided always and the said Sir Thomas and Thomas the son nevertheless for them and their heirs do covenant and grant to and with our said Sovereign Lady the Queen her heirs and successors by these presents that all such castles manors lordships abbeys priories lands tenements and other hereditaments lying and being within the precinct of the countries or parts before-named as shall not be won possessed inhabited nor divided by the Sir Thomas Smith and Thomas Smith the son their heirs and assigns in manner and form before covenanted and promised before the 28th day of March which shall be in the year of Our Lord God 1579 shall immediately after the said 28th day of March remain come and be to our Sovereign Lady the Queen her heirs and successors and that then and from thenceforth such rents and services as are payable to be done for the said castles manors lordships monasteries priories lands and tenements and other hereditaments in the premises so not being occupied

possessed nor inhabited as above said, shall for their rate and quantity cease and determine anything to the contrary notwithstanding.

In witness whereof to the one part of these presents Indentures remaining with the said Sir Thomas Smith the father and Thomas Smith the son our said Sovereign Lady the Queen hath caused her Great Seal of England to be put. And to the other part of the said Indentures remaining with our said Sovereign Lady the Queen the said Sir Thomas and Thomas his son have put to their seals the day and year first above-written" (O'N. *v.* J., 106).

Particulars of the expedition and its consequences are given in a "Life of the Learned Sir Thomas Smith, Knight, Doctor of the Civil Law, Principal Secretary of State to King Edward VI. and Queen Elizabeth," published in London in 1698:

"Anno 1572.—This year Sir Thomas procured a colony to be sent unto a land of his in Ireland, called the Ardes. It was a rich and pleasant country on the eastern coast of Ulster, of considerable extent, lying well for trade by sea; bordering upon a country where Sarleboy [MacDonnell] contained himself with his party. He was a Hebridean Scot (the Hebrides bordering upon this province), a long time detained prisoner by Shan O'Neal, the Chief Prince of Ulster. This country was called Clandeboy, where these Scots lived; but they were beaten out once by this Shan, who called himself Earl of Tir Owen, and had killed two of the brethren of MacConel [MacDonnell], of which family was Sarleboy, whom he had taken prisoner, but afterwards in an extremity gave him his liberty. This Shan was afterwards, in a revenge, slain by Sarleboy and his party.

"His son being now with his colony upon the place, proceeded commendably in order to the reduction of it. He was in a good forwardness for reducing Sarleboy to obedience, for they had much converse together, and came at length to articles of agreement, the main of which was that he should be made a denizen of England by the Queen, and hold his land of her and him, and the same privilege should the

rest of his Scots enjoy, paying to the Queen a yearly rent in acknowledgment, and he to become homager to her by oath, and so to be a faithful subject, or else lose his right. . . .

" The Queen had a force of men in those parts for necessary defence, and for the keeping of Knockfergus, a very important place for curbing the Irish. But, to retrench her charge in Ireland, she was minded now to discharge them, as she had done some already, excepting that Smith would secure those quarters, nor would she grant any foot or horse to him. . . .

" But while these matters thus fairly and hopefully went on, Mr. Smith was intercepted and slain by a wild Irishman ; yet Sir Thomas did not wholly desist, but carried on the colony, and procured more force to pass over there, for in March *anno exeunte* (his son being but newly, if yet, dead) there were Harrington, Clarke, and some others, adventurers in this design, that gave certain monies for lands there to be assured to them, in the beginning of March, 1572, the ships, captains and soldiers were ready to be wafted over, unhappily some persons concerned had started some new matter in regard to the bargain, which put a stop to their departure. . . .

"And though the family and heirs of Sir Thomas, who are extant to this day, have often claimed their interest in this land, which their ancestors did so dearly purchase and well deserve, yet they enjoy not a foot of it at present.

" For, as I have been informed by some of that Worshipful family, Sir William Smith, nephew and heir to Sir Thomas Smith, were merely tricked out of it by the knavery of a Scot, one Hamilton (who was once a schoolmaster, though afterwards made a person of honour), with whom the said Sir William was acquainted. On the first coming in of King James I. he minded to get these lands confirmed to him by that King, which had cost Sir Thomas (beside the death of his only son) £10,000, being to go into Spain with the English Ambassador, left this Hamilton to solicit this his cause at Court, and get it despatched. But Sir William being gone, Hamilton discovered the matter to some others of the Scotch nobility, and he and some others begged it of

the King for themselves, pretending that it was too much for any one subject to enjoy. And this Hamilton did, carefully thinking that if he had begged it all for himself, he might perhaps have failed of success, being so great a thing, but that he might well enjoy a part, especially with the concurrence and interest of some of the powerful men about the King when they begged for themselves. And never after could Sir William or any of his posterity recover it. For the premises had been so long possest by others, that neither Sir Thomas Smith, who had suffered much for his unshaken loyalty to Charles I., had success in his petition preferred to King Charles II. upon his return ; nor yet Sir Edward Smith, still surviving, in his, upon the late Revolution."

Elizabeth plainly thought that her " Indenture " with Sir Thomas Smith was not fast-bound. Within two years after his failure in Ulster she was in treaty with the Earl of Essex to take up the work of conquest. The Carew MS., p. 439, contains : " The Offer of Walter, Earl of Essex, touching the inhabiting of the North of Ireland." On the 26th May, 1573, this favourite, in the same business-like spirit which the Queen's " Indenture " with Secretary Smith manifested, made the following stipulations :

" 1. He was to have of her Highness in fee the country of Ulster called Clandeboy, extending from the river behind Belfast towards the Ards, by the right line to Lough Aghe (Neagh) with the Rowte, the Glinnes and the Rowghe-Glinnings or the Rofflins (Rathlin Island)," etc.

" 2. To have all the havens and the fishing of the Ban and Lough Leigh " (*i.e.* Belfast Lough) " and all other fishings within the limits aforesaid."

On the 3rd August, 1574, the Privy Council wrote to Essex, inquiring : What profit is had of the fishing of the Bann ? No answer is recorded, but a " breviate " of a Patent to be granted to Essex of the territory of Clandeboy, with the fishing of the Bann and Lough Leigh was made out in draft. A memorandum is appended—" The Attorney-General cannot proceed until he have a warrant," but the Queen's ratification appears later to have been given.

The Earl of Essex then made peace with Sir Brian O'Neill,

and invited him to a feast at Carrickfergus. There the "Four Masters" relate that "after three days and nights passed cheerfully and pleasantly together, while they were agreeably drinking and making merry," Sir Brian, his brother and wife were arrested, and their people put to the sword. Sir Brian and his wife were sent to Dublin, "where they were cut into quarters. Such was the end of their feast." (M. MS., 591.)

If the expeditions of Smith or Essex had succeeded, it would have been necessary in order to vest any land they conquered, whether by virtue of the 11th Elizabeth or otherwise, to establish: 1st, its ownership by an attainted lord; 2nd, the boundaries of his estate; 3rd, that a Commission to hold an Inquisition had been sped by the Crown; and 4th, that the findings of the jury thereon were enrolled in Chancery or in the Exchequer. Lands so confiscated always bore a rent payable to the Crown and had to be put "in charge" in the Exchequer, to show the existence of a new source of profit to the State.

None of these things occurred, nor are anywhere recorded.

Nearly a century afterwards a petition from Mr. Thomas Smith was presented to Charles II. on his Restoration, claiming the lands granted to his ancestor. It set out: "In the 13th year of her reign, the said late Queen did make a grant of Letters Patent under the Great Seal, to the said Sir Thomas Smith, and Thomas his then son and heir apparent, of divers manors, castles and lands thereunto belonging, in the County of Down, in the realm of Ireland, which were then possest by divers persons who were in actual rebellion against her Highness. . . . And Her Majesty, taking note of such the great service of the said Sir Thomas Smith, was pleased several times to declare that her royal intentions towards the said Sir Thomas should be made good. But by reason of the great many troubles falling out in her time, the same was not done during all the time of her reign. And afterwards the said Sir William Smith the elder was commanded by the said Queen upon service into Spain. And upon his departure out of England, he desired Sir James Hamilton, Knight, to prosecute his grant on the said Sir William's

behalf, and procure the same for him ; and the said Sir James Hamilton, in the time of your noble grandfather, King James, upon some undue pretences, contrary to the trust reposed in him by the said Sir William Smith, obtained the said lands to be granted to himself, upon pretence of a valuable consideration paid, which in truth was never paid. But in truth according to the intentions of the late Queen, the said lands are the right of your petitioner."

Charles II. considered this petition worthy of the following order :

"At the Court of Whitehall, 14th November, 1660. His Majesty is pleased to refer this petition to the Right Honourable Sir Maurice Eustace, Lord Chancellor of Ireland, who, having examined and considered the contents of this petition, is to certifie His Majesty how he findeth the same, and what his Lordship conceiveth to be just for His Majesty to do therein, and then His Majesty will declare his further pleasure. "EDW. NICHOLAS."

The Irish Chancellor certified : " I have, according to your Majesty's gracious reference, considered the petition of Thomas Smith, Esquire. And considering that the petitioner doth ground his title upon a Patent made 13th Elizabeth to his ancestors, and that the said title has been very much controverted, and the possession gone for a long time against the petitioner, and some descents cast, I humbly conceive that it is neither fit nor convenient for your Majesty to determine this cause upon a paper petition. But your Majesty, in regard your Courts of Justice in Ireland will be soon open, may be pleased to have all parties pretending interest in the said lands to your Majesty's Courts of Justice in that your Kingdom, to be proceeded in as they shall be advised by their counsel. And the rather for that the Earl of Clanbrazil [son to Hamilton], who is interested in the said lands by descent from his father, is a minor, and under years, and cannot be concluded by any Order which may be made against him during his minority, all which is humbly submitted to your Majesty's judgment.

"MAURICE EUSTACE, Canc."

Thus the hopes of the Smith family were for ever dashed.

CHAPTER IV.

HUGH EARL OF TYRONE.

Hugh O'Neill, son of the slaughtered Matthew, spent his boyhood in England, under the care of Elizabeth's favourite, Leicester, at Kenilworth. The lad had originally been taken in charge by the Lord Deputy, Sidney, who wrote of him in 1583 to Walsingham : " Shane's brother's eldest son, whom I bred in my house from a little boy, then very poor of goods and full feebly befriended " (C. MS., 339). Possibly if the Queen's schemes for the reduction of Ulster had prospered, Hugh O'Neill would not have been permitted to return to his glens, but would have been detained in Elizabeth's service elsewhere. The failure of the Smiths and of Essex led to his being sent back to Ireland.

After his return Hugh served in the Queen's armies against his countrymen, but, in spite of this open espousal of Elizabeth's cause, he was, in 1584, elected by his clan Chief of the O'Neills, having received the support of the head of the neighbouring Sept—the O'Donnells. Three years later, on the 10th May, 1587, Elizabeth, by Patent, granted and confirmed to Hugh O'Neill all the land his grandfather Con held from Henry VIII. in Tyrone (except a Castle on the Blackwater), and the title of Earl of Tyrone, with remainder to his sons.

Before the Patent issued, the metes and bounds of O'Neill's territories were ascertained in due form of English law by a finding of " office." The verdict of the jury was : " That the metes and limits of the country called Tyrone, beginning at the North part of the river of Fynn, run to Lough Foyle, and from Lough Foyle by the seashores as far as to Bann,

and so tend towards the east, at Lough Neagh alias Sidney, below which limits the jurors say that there are the territories called O'Cahan (Clanconkein and Killetra), but they are not lands of the O'Neills in demesne. And further, the jury know not what services the tenants of the aforesaid territories (O'Cahan's) were bound to pay to the aforesaid Con O'Neill, Earl of Tyrone " (S.P.I., 332).

This shows that neither Con nor Hugh O'Neill's Patent embraced Lough Neagh ; and that the Lough bounded their territory on the east, as to-day it forms the eastern boundary of Tyrone. The river Bann is assigned as another of O'Neill's eastern boundaries, and therefore as regards fishing rights the Patent at most only conferred riparian privileges.

Hugh O'Neill was in high favour with Elizabeth when his Patent was granted. He was her loyal subject, and she gave him everything that Con had held, except a fort on the Blackwater. Independently of Elizabeth's Patent, Hugh O'Neill was entitled by English law, under Con's Patent from Henry VIII., to succeed to his grandfather's estate. The imputed bastardy of his father, Matthew, was never admitted by the Crown, but was an allegation of Shane, who, in legal intendment, was a usurper.

Lough Neagh and the Bann separated and effectually marked off, the territory of the Tyrone O'Neills, from that of their kinsmen on the eastern side of those waters. When Lord Deputy Sidney was struggling with Shane O'Neill, who had mastered Claneboy (on the eastern side of Lough Neagh), he made a treaty with Turlough O'Neill (Lynagh) on the 6th September, 1566, styling him " principal captain of Tyrone," and compelling him to " renounce all claim on Kilulta and Claneboy " (M., 502). Thus it was the essence of the Crown case as to Hugh O'Neill's territory, that it comprised neither the River Bann nor Lough Neagh. People of the Sept, no doubt, occupied Claneboy ; and on the 19th November, 1592, Elizabeth dealt with the eastern O'Neills in a letter to the Lord Deputy. She therein studiously avoids calling any of the Chiefs of Claneboy by their surname, as " O'Neill " had been abolished by Statute :

" Where by your other letter of the 25th of October,

addressed to our Council, it appears that, for extinguishing the contention between Shane M'Brian and his cousin, Neale Oge, touching lands in North Clandeboy, they have submitted themselves and given pledges to live in obedience to our laws, and are desirous to have, by our grant, the country divided between them ; whereupon you have thought it convenient that Shane M'Brian, being the Chief of the Sept, should have three parts of the country, and Neale Oge a fourth part, and yet, nevertheless, that the Castle of Edendokerrig, with the lands thereunto belonging, should remain with us, for which they both have made such contention ; we perceive that you have no warrant to make this division and grant according to the plot devised ; but we so well allow of this your purpose, to reduce these Irish into civility, by these presents we give you sufficient warrant to cause grants to be made to those two persons, after division shall be made (excepting the castle, to be held by us, with the territories thereof), reserving upon those grants several tenures of us by knight's service, a reasonable yearly rent, and risings out for our service, according to the quantity of the land, and as you and our Council shall think convenient ; and also to devise how some persons who have been subject to the Irish rule of the M'Brians may be allotted to hold of us, as you have very well devised, in the country of Monaghan, which we leave to your discretion to be performed " (P. and C.R.C., 1.)

This document, coupled with the Patents to Con and Hugh O'Neill, demonstrates that Lough Neagh formed the boundary of separate " countries " and that its waters were not embraced by any O'Neill grant. The ancient and well-known limits of the Dioceses forming the Northern bishoprics corroborate this view.

The Act 11th Elizabeth plainly worked no confiscation as to Lough Neagh. It was frequently cited by Crown lawyers as a warrant for other acts of plunder, but they invented quite another theory for dealing with the Queen's title to fisheries.

Ireland was then looked upon by the adventurers who flocked thither, as a carcass to be carved up amongst them, regardless of right. " The eagles took wing for the Spanish

Main ; the vultures descended upon Ireland " (I.H.C., 79). While in merry England, Shakespeare and Jonson and Spenser were singing their sweetest, " the lowing of a cow or the sound of a ploughboy's whistle " could not be heard throughout an entire Irish province.

The great Ulster revolt, which Hugh O'Neill finally led, was provoked by the conduct of Deputy Fitzwilliam. According to Gardiner, Fitzwilliam " was guilty of the basest perfidy in seizing and imprisoning some of the chiefs ; and he not only accepted bribes from them, but had the meanness not to perform his part of the bargain for which he had taken payment " (H.E.G., vol. ix. p. 361).

Fitzwilliam's conduct was the worse because Queen Elizabeth in 1580, when sending him to Ireland, cautioned him straitly, thus :

" We are told that some of our captains and soldiers there have of late dealt very treacherously and barbarously with some of them, by inviting them to banquets and parleys, and afterwards slaying them in most cruel manner when they had them in their hands " (S.P.I.A., 592).

The immediate cause of the rebellion can be shortly stated :

Fitzwilliam accepted from the Chief of the MacMahons of Monaghan, on the death of his father, a huge sum for a renewal of the Patent. The Deputy promised the Patent, and visited the lands. There he discovered that MacMahon had distrained for rent before the Patent was issued. Fitzwilliam declared this high treason, and hanged MacMahon (who had hospitably entertained him) at his own door and confiscated his estate. Thereupon the other Ulster Chiefs took the field, knowing that otherwise their own turn would soon come. O'Neill headed them, and at one moment seemed likely to become master of Ireland. He was a cautious and moderate man, who would never have assailed English authority but for the venal and voracious captains who infested Dublin Castle, and their design to find a pretext to strip the chiefs of their estates. Whether the Earl of Tyrone remained loyal or went to war, his fate in the end would have been the same. The Viceregal following hated

the power and coveted the lands of the Ulster lords; and were venturesome and hungry men.

The war with O'Neill dragged on for years; and towards its close came a critical moment in the domestic history of England, Scotland, and Ireland. In March, 1602-3, Elizabeth Tudor lay dying. The succession hung in doubt, whereupon a few London courtiers determined to make the experiment of bringing in, as Sovereign over three realms, the King of Scots who had abetted O'Neill in his revolt. Son of a woeful mother and a worthless father, James I. entailed through himself and his descendants almost as much misery and bloodshed on the Three Kingdoms as all the rest of the British Monarchs put together.

Before the news of the last illness of Queen Elizabeth was known in Ireland outside Dublin Castle, Sir Garrett Moore (ancestor of Lord Drogheda), an old friend of O'Neill's, was sent spurring into the North with Sir Wm. Godolphin (23rd March, 1602-3), as messengers of the Deputy, Lord Mountjoy, to persuade O'Neill to tender his submission (S.P.I.A., 583). After parley, the Earl of Tyrone came south to Mellifont Abbey, Co. Louth (then and now the residence of the Moores), and, unaware of the death of Elizabeth, made his peace, on promise of the restoration of his estates.

There had been other negotiations in the previous summer, after O'Neill's vassal O'Cahan deserted him. In June, 1602, Sir Garrett Moore wrote to Mountjoy:

"The man I sent to Tyrone yesterday is returned to me. . . . He showed him the articles I sent, which, when he had perused . . . he said he could not sign . . . as some of them were mistaken—Turlough's sons and O'Cahan being included in his Patent as part of Tyrone. He will be ready to show this to any when it shall please you to have sight of the same" (S.P.I.A., 447).

The draft articles of the Treaty of Mellifont are still preserved, and show that at first the Government attempted to make a much harsher compact with O'Neill, but the Earl would sign no surrender until the restoration of all the lands comprised in his Patent was guaranteed to him. Mountjoy had written to Sir George Carey, on 23rd March,

1602-3. "Rumours begin to come thick out of Spain (which) perchance will make (me) open my hand to him more than otherwise I was determined" (S.P.I.A., 583). A repugnant treaty had already been made with O'Cahan, but Mountjoy was fearful lest the news of the accession of James I. would leak out, and he was forced to yield the Earl terms which conflicted with his previous arrangement with O'Cahan. Of these Mountjoy wrote to the Privy Council, 11th October, 1602 :

"O'Cahan, who is the greatest *uriaght* in Ulster . . . has now sent two persons here to solicit the performance of the other point, the surrender and regrant. . . . We have given him a custodium under the Great Seal of Ireland of his part of his country, till the Queen sends us a warrant to give him a further escheat. Please expedite this, as he has fulfilled his part of the agreement" (S.P.I.A., 496).

Any ending of O'Neill's revolt was welcome to James I. who was gracious and politic to the surrendered chieftain. The war had cost Elizabeth, according to Sir John Davies, Attorney-General, "two million pounds and the largest army in Europe" to defeat him (S.P.I., 1607, p. 273. Money was then ten times its present value.) So the epoch-making Scottish succession began in triumph, and its lustre blazed still brighter when Mountjoy brought O'Neill and O'Donnell in his train to London to receive the pardon of their old ally, now the undisputed Monarch of the Three Kingdoms. They were forgiven and feted by James, while Mountjoy was graced with the title of Earl of Devonshire. Yet Hallam maintains that the legal right by which the King of Scots achieved the United Thrones, was so weak that at law he could not thereby have recovered in ejectment an acre of land (v. i., p. 392).

CHAPTER V.

CHICHESTER OF DEVON.

Second in command in Ulster during the war against Hugh O'Neill was Arthur Chichester, son of Sir John Chichester, a Devonshire worthy. He was educated at Oxford, where a boyish prank compelled his flight from the University. This is darkened by some annalists into a conviction for theft. The lad, no doubt, attacked the Queen's tax-gatherers, and his conduct was taken seriously by the authorities, but it was not petty larceny. Driven from England, Chichester fled first to Ireland, and then took service in France, where he was knighted by Henri IV. for bravery on the field. Subsequently he commanded a privateer under Drake. With so large an appetite for battle, Sir Arthur was soon recognised as a suitable soldier for the Irish wars, in which his brother John had already lost his life in the Glens of Antrim.

It was probably about 1598 that Chichester began his Ulster campaign. At that date Hugh O'Neill had humiliated Essex, both in the field and in diplomacy; and Essex was soon replaced by Lord Mountjoy. Within three years Mountjoy so starved and slew the Irish that hardly a "rebel" was left alive.

Chichester had been selected for the Irish service by Cecil, Queen Elizabeth's famous Secretary of State, and when he re-visited London in the pauses of the Irish campaign (June, 1600), Mountjoy reported him to Cecil as "the ablest and most unselfish of Her Majesty's servants in Ireland." On the 18th August, 1600, Chichester wrote to Cecil: "My bare allowance of ten shillings per diem gives little grace to my place. . . . My wants are great, and I

am a very ill suitor—an unsavoury denial being worse to me than the edge of Tyrone's sword" (Hd. MS.). He returned to Ireland in October, 1600, and, lest his own advocacy might not prevail with Cecil, he got his friends in Devonshire to commend him. On the 10th April, 1601, Dr. L. Sharpe, of Devon, wrote to Cecil: "Sir Arthur Chichester is a special branch of the house whose love you have by descent. For his father and brother were specially well affected to and of your honourable father—his nephew, a gentleman of generous spirit and excellent parts, and willing to be embraced by you" (E.S.P., 28). Cecil, in letters to Sir George Carew in 1600 and 1602, affectionately writes of Chichester as "Arthur" and "poor Arthur" (C.S.P.).

How dominant Cecil was in the Councils of the Crown may be gathered from a complaint, made on his death in 1612, in a letter of the Earl of Northampton to Rochester (E.S.P., 1451), that "the little lord made his own Cabinet the treasury of the State's whole evidences and intelligence." Hepworth Dixon says: "Except in naval affairs . . . no department of the public service, home or foreign, trade, police, defences, law, religion, war or peace, escape the quick eye and the controlling hand of the tiny hunchback. Everyone serves him; every enterprise enriches him" (F.B., 163).

Cecil, having previously held minor office, became first Secretary of State in 1608, and throughout his life was Chichester's friend beside the King. Chichester in all his soldierings, and during his subsequent Deputyship, never forgot to pay homage to "the little lord." Presents from Ireland (whose hawks and dogs were famous) reached Cecil continually from his protegé. King James was fond of hawking, and would "lodge at an inn at Ware" for the sport; while Cecil liked to present an Irish dog or falcon to the Foreign Ministers at Court.

Chichester's correspondence, while he commanded at Carrickfergus in the closing years of the war against O'Neill, exhibits the closeness of their relations. On the 9th June, 1601 (S.P.I., 443), he speaks of sending Cecil hawks. On the 4th January, 1605 (S.P.I., 224), he writes: "Endeavours

his best to get fair dogs for him, in which the country is very scarce, the Lord Deputy having sent as many as he can get already to England. Seeing Cecil desires them, he will from henceforth breed some for him, and in the meanwhile send such as he can get." On the 16th June, 1605, he writes : " Has sent dogs and a bitch great with whelps. They are the fairest this Kingdom affords " (S.P.I., 362). On the 5th June, 1606, he tells Cecil he has " sent him by this passage a brace of the fairest dogs in that Kingdom, thinking he would have the occasion to dispose of them on the coming of the King of Denmark " (S.P.I., 496).

On 19th July, 1610, he reports : " Has in readiness some dogs and mewed hawks to send your Lordship . . . They are poor presents for so rich a benefactor, for which he prays to be excused " (S.P.I., 480).

The hawking passion of the time is evidenced by a letter of James while King of Scots. He wrote in 1597 from Perth to Frazer of Pilworth : " Hearing that you have a ger-falcon, which is esteemed the best hawk in all that country, and meetest for us that have so good liking for that pastime, we have, therefore, taken occasion effectuously to request and desire you (seeing hawks are but gifting gear, and no otherwise to be accounted between us and you being so well acquainted), that of courtesy you will bestow on us that goshawk and send her here to us with this bearer, our servant, whom we have on this errand directed to bring and carry her tenderly."

The despatches by which Chichester kept Cecil in touch with Irish affairs show marvellous policy ; and no English captain wielded sword and pen with the same assiduity and effect. Chichester's brother, Sir John, while serving at Carrickfergus, was taken prisoner and " beheaded on a stone " (4th November, 1597), by Sorley MacDonnell of the Isles, who then held North Antrim for the King of Scots. Sorley afterwards accepted allegiance and his estate under Queen Elizabeth, and it was Cecil's policy not to antagonise the Scots too bitterly. This will explain Chichester's letter of the 16th December, 1600 :

" To make known how I prefer Her Majesty's service

before my own particular revenge, I have dealt with Randal MacDonnell, son to Sorley, my next neighbour . . . and have granted him a protection until May next. If I be not paid the remainder of my debts due from her Majesty, I beg that you will favour me therein, and allow me Randal's rent in part payment, which I will keep upon my hands if I have no further direction, until I understand your pleasure" (S.P.I., 83).

On the 23rd November, 1603, Chichester writes to Cecil from Carrickfergus: "Is likewise a humble suitor that, whereas the letters the King wrote hither in his behalf touching a Patent for the government of Knockfergus and lands of Belfast, are by the learned counsel found defective, he will be pleased to be the means that some other, to better purpose, may be signed by his Majesty; and albeit when he has it at best perfection, he will gladly sell the lands for the price which others sell, £5 in fee simple, in these parts of the Kingdom, yet he must ever acknowledge himself much bound to him (Cecil) for procuring the same for him" (S.P.I., 108).

On the 22nd February, 1603-4, he pleads: "About three years since, made suit for the remain due to him from our Queen deceased, and besought . . . that he might be paid it out of such rents as he should raise to the Crown. . . . Now the rent of Sir Randal MacDonnell being the first that hath been paid since that time, it is collected by his order, and bestowed for other the King's uses and not towards his (Chichester's) payment. Prays for a letter to the treasurer in that behalf. Is likewise a suitor to my Lord Treasurer, and the Lord Lieutenant. Has made all things perfect with the auditors, and there shall be no abuse in the accounts or receipts" (S.P.I., 149).

The auditors having thus been "squared" and the Royal Accounts "cooked," an order was made for the payment of £500 to Chichester on the 30th April, 1604 (S.P.I., 164).

During the warfare against O'Neill, Chichester fiercely seconded Mountjoy's forays. On the 14th May, 1601, he writes to the Deputy from Massereene Fort on Lough Neagh: "I have launched the great boat, and have twice

visited Tyrone with her, and after with lesser boats. We have killed, burnt, and spoiled all along the Lough within four miles of Dungannon, from whence she returned yesterday ; in which journeys we have killed above a hundred, of all sorts, besides such as we have burned, how many I know not. We spare none, of what quality or sex soever, and it hath bred much terror in the people, who heard not a drum nor saw not a fire of long time. The last service was upon Patrick O'Quinn, whose house and town were burnt, wife, son, children, and people slain, and himself (it was reported to me) of a hurt received in flying from his house" (S.P.I., 355-6).

On the 8th October, 1601, he announces : " I have found, said and written that it is famine that must consume the Irish, as our swords and other endeavours work not that speedy effect which is expected. Hunger would be a better, because a speedier, weapon to employ against them than the sword." He rails at them as " the most treacherous infidels in the world," and declares : " We have too mild spirits and good conscience to be their masters. No course will . . . bring the country into quiet but famine, which is well begun, and will daily increase " (S.P.I., 111).

When the wars ended, such a veteran meant to be repaid for his pains. King James appointed him Governor of Carrickfergus and Admiral of Lough Neagh, by Commission (29th December, 1603), addressed to Lord Mountjoy : " I explanation of our favour towardes Sir Arthur Chichester, knt., signifyed in our letters of the 8th Aug. last ; our pleysure is, that he shall be invested with the government of Knockfergus, and of all other fortes and commaundes, with the Loughneagh, etc., and the fee of 13s. 4d. ster, by the day, for lyfe ; and that you pass unto him, his heires and assignes, the castel of Bellfast, the Fall, Myllone, the towagh of the Sinament, and the fishing of the Lagan, etc., mentioned in a custodiam graunted unto Sir Raphe Lane, knt., by the late queen."

This Commission placed Chichester over Lough Neagh, with a life command, at a salary ; and served as the foundation of his pretence to an absolute ownership of the Lough.

CHAPTER VI.

THE SERVANTS OF KING JAMES.

The Northern war made Chichester acquainted with everything of value in Ulster. Its fisheries were an especial source of wealth. The fins of Lough Foyle made O'Donnell, Chief of Tyrconnell, known in Spain as the "King of Fish"; and the wines he imported were exchanged for the produce of its waters. The salmon and eel of Lough Neagh and the Bann fed the O'Neill clan in winter, when their crops and stock were burned or destroyed by the invader.

Lough Neagh, as a great inland sea giving access to five counties, was of high importance to Elizabeth's generals, both strategically and for commissariat. On penetrating Ulster they built forts round it at Toome, Massereene, Mountjoy, and Charlemont. They even developed a fresh-water "naval policy," imitating the prowess of the Danes who maintained a fleet on Lough Neagh from the year 838 to 933 A.D. (O.S., 299). Having seen the advantages of placing war-boats on Lough Erne at Enniskillen, and on the Shannon lakes at Athlone, the Elizabethan captains ended by launching a flotilla on Lough Neagh. £100 a year was assigned for the three services. The Royal vessels on Lough Neagh were put first under the command of Sir Hugh Clotworthy and afterwards of Capt. George Trevelyan, a nephew of Chichester.

On the eve of the subjugation of Ireland in 1602-3 the question of the succession to the throne must frequently have been debated by the Elizabethan captains in relation to its bearing on their own fortunes. The men of Devon especially were "out" for plunder; and the prospect of the

accession of the King of Scots, whose countrymen were often open foes and oftener the secret allies of the Irish, doubtless troubled them sorely. When James I. came to London, Mountjoy, as we have seen, sped across from Ireland bringing O'Neill and O'Donnell with him to make obeisance to the Scottish King. The Stuarts did not rate themselves higher in Scotland than the O'Neills did in Ulster. During the war against Elizabeth the two families were in complete understanding. James at Holyrood received Henry O'Hagan as an envoy from O'Neill (after his victory at the Blackwater) to tender him the Crown, as its rightful heir ; for neither Scot nor Gael regarded Elizabeth as legitimate. She in turn inveighed against " the barbarous Scots " in Ulster as roundly as against the " wild Irish." James, on assuming the triple crown, appealed by proclamation to Ireland for allegiance as a descendant of its Gaelic kings. Nor was his claim denied, except in walled cities like Cork and Waterford, where English descent was boasted.

When in his humbler days at Holyrood, James entertained a wandering Irish harper, it is related that his praise left the minstrel unmoved. " My skill," said the bard, " has warmed better blood than thine." " Why, whose ? " asked Darnley's son. " The great O'Neill's," was the reply. Hugh O'Neill, even in defeat and exile, was welcomed by Continental kings, and was described by Henri IV. as the second soldier in Europe.

James began his reign over the Irish in a spirit of wisdom and justice. Two years later, the Gunpowder Plot was availed of to embitter him against both Irish and English Catholics (G.P., 108). He received O'Neill in London so graciously that the grim captains, who had withstood the Earl's onset in the dreadful Ten Years' War, cried out in protest. Sir John Harrington, in a letter to the Bishop of Bath, exclaimed : " I have lived to see that damnable rebel Tyrone brought to England, honoured and well-liked. Oh, what is there that does not prove the inconstancy of worldly matters ! How I did labour after that knave's destruction ! I adventured perils by sea and land, was near starving, ate horse-flesh in Munster, and all to quell that man, who now

smileth in peace at those who did hazard their lives to destroy him ; and now doth Tyrone dare us, old commanders, with his presence and protection " (Mn., 27).

This feeling ultimately proved the destruction of the Ulster lords. Those whose ideas of statecraft began and ended with the hope of personal plunder, after a few years, drove them into exile. The alarm aroused in the King's mind in 1605 by the Gunpowder Plot, largely contributed to the toleration of brigandage in his officials (S.P.I., 359). That at his accession his sentiments were friendly is shown by his order (11th September, 1603) to the Lord Lieutenant " at the next assembly of Parliament there, to cause an Act to be passed for the restoration in blood " of O'Neill and his brother Cormack (E., 25). The spirit of this order was set at naught. No Parliament was summoned in Ireland for eight years afterwards, and then it met only to attaint O'Neill and confiscate his lands, when (on peril of his life) he quitted Ulster for ever, with O'Donnell, Earl of Tyrconnell, and Maguire, Lord of Fermanagh.

The triumphant warriors who had battled with them, who had suspected their relations with the King of Scots, and distasted the wise and reasonable courses of James, were in no humour for parley with fallen Earls. Theirs had been the brunt of the fight, and, when victory came, they felt small shame in thwarting or cheating the Edinburgh Thane, for whom the Crown of England was guerdon enough. It might suit London policy to bring in the King of Scots ; but it did not suit Dublin policy to obey him too blindly. The Anglo-Irish officials were fiercely Protestant, and could not forget that the Pope had promised O'Neill, O'Donnell, and O'Sullivan the same indulgence, here and hereafter, as was given to those whose swords were drawn against the Turks for the ransom of the Holy Sepulchre. (Cox, v. i. p. 365, S.P.I.A., 341).

For the moment, baulked of their prey, the hungry captains bided their time, and beset the pardoned chieftains with snares. The Earls, however, gave no excuse to those who coveted " escheats " of their lands. O'Neill even was untruly said by Chichester to have hanged one of his own nephews for attempting a foray in Tyrone.

Chichester, although addressed as " Deputy " by the King so early as the 15th October, 1604 (E., 87), did not assume office at once. He came up from Carrickfergus on the 4th January, and took lodgings in Dublin, being sworn in on the 24th February, 1604-5. Mountjoy (now Earl of Devonshire) was then in England, where he died in April, 1606 ; but he retained the position of Lord Lieutenant until October, 1605, although he never returned to Dublin Castle. In the earlier period of Devonshire's absence his post was filled by Sir George Carey, Treasurer at War, who was appointed Deputy on the 30th May, 1603.

Sir George Carey's departure, when Chichester assumed supreme command, is described in a " letter of advice " (signature missing) to the Duke of Northumberland :

"About three weeks past, the Lord Deputy embarked the most part of his money, plate, jewels, and stuff, and sent them away to England. It is believed that the goods were of great value and that his lordship made such a hand of enriching himself, in this land, as the like was never done by any other that supplied the place. . . . Being treasurer and master of the exchange of both realms, he and his paymasters made a great hand that way, especially in passing many bills of exchange, in the name of divers that were never privy to them, and in paying the army and others in the mixed moneys. . . . Being Deputy, he disposed of the money as pleased him, no one daring to question his doings, having both the sword and purse in his own hands " (S.P.I., 245).

We get a like impression of corruption and injustice from a letter of Lord Clanrikarde (Governor of Connaught) to Cecil, dated 26th February, 1605-6 : " I am weary of this unhappy Ireland, that yields no contentment to any but such as take their own corrupt actions, and make a merchandise of justice. As I am none of these, I therefore desire to be in Ireland as little as I can. I deplore the conduct of the late Deputy, but will be silent until I come over " (S.P.E., 262).

When Clanrikarde came to London a few months later, it was as the bearer of a " Memorial " from Chichester to James I. This appears from the King's reply of 2nd September, 1606, which shows his friendship to the new Deputy :

" Upon much speech with our very good lord, the Earl of Clanrikarde, to whom you have committed divers things by way of Memorial to represent unto us, which he hath done with very great discretion and zeal for the public service, besides good demonstration of his particular affection for yourself " (D.C.H., 492).

If Clanrikarde imparted anything to the prejudice of Carey or Devonshire, in the matter of grants, the traces of it in the subsequent correspondence are slight. But after Devonshire's death, Chichester, on the 30th July, 1606, wrote Cecil :

" Sends herewith a docket specifying the disbursement of the £12,000 lately acquired for the service of this Kingdom, in which he conceives great abuse has been committed by some ministers in that office, which cannot be remedied here. The Sub-Treasurer casteth it upon Sir George Carey's officers. . . . As long as Sir George Carey's ministers have the fingering of the treasure, they will be ever subject to like dealing. For they have so many bills and tickets in their custody, and so many friends to pleasure, that if £20,000 were presently impressed he [Chichester] should see the least part thereof " (S.P.I., 533).

Of the " Sub-Treasurer " thus mentioned more will be heard. He was one of the land traffickers of the period, but on the 19th September, 1606, he was warmly commended to Cecil by the Deputy :

" Recommends to his lordship's favour Mr. James Carroll, the Sub-Treasurer, who hath not only disbursed his own store, but, upon all occasions, hath engaged himself by bonds and other ways to serve the present sufficiency. He is besides a very honest and sufficient man, and, as occasion shall present itself, fit to be preferred to some place of advancement in this Kingdom " (S.P.I., 574).

Such was the human material furnished to James I. to rule Ireland with. The higher officials installed there at his accession were mostly arrant selfseekers. Nor did the influence of the adventurers who followed the King from Scotland, and then crossed over to prey on Ireland, improve their probity.

CHAPTER VII.

ATTORNEY-GENERAL DAVIES.

Ireland was officially regarded as a land where the conduct of the King's Ministers could not be expected to be strait-laced. "To a needy and poor man and one that liveth to spend all his own and more, this country is a shrewd allurement to cause such a one to step aside." So confessed the Deputy of 1592 to Burleigh (S.P.I., 484), and such was the tradition of centuries. It was usual to accuse Deputies of plundering; but Chichester is a man of mightier stature than most; and, having slept three hundred years in his grave, cannot now be arraigned of new offence without certainty and high occasion.

The Scots King of the United Kingdom was poor and extravagant. He did not disdain to ask loans even from O'Neill. In 1606 he borrowed £266 14s. 4d. from him (C. James I. p. 534). In present value, the amount should be largely multiplied. Previously Cecil horrified Deputy Carey by ordering a bill of exchange for £600 to be drawn on the ex-rebel (Mn., 33).

Chichester had been secretly trafficking in Ulster lands, and bluntly advised that the King must not be beholden to O'Neill. He had planned O'Neill's murder during the wars, and was now hatching charges of high treason, which would put the whole of Ulster at the Royal disposal and at his own.

What the Deputy chiefly coveted "savoured of the realty," and this had to be conveyed under form of law. For that, the co-operation of the Irish Attorney-General was indispensable; and, in Sir John Davies, Chichester found

an assistant as painstaking, ingenious, and resolute as himself. They were admirably matched.

Davies arrived in Ireland as Solicitor-General in November, 1603, and was in 1606 promoted Attorney-General. Chichester without Davies, or Davies without Chichester, would have been ineffectual. Both were protégés and friends of the Earl of Devonshire ; and the tie between the Deputy and his Attorney-General was very close. They worked without a trace of friction ; and their joint achievement was the expulsion of Irish law and Irish lords from Ireland. Davies continued to hold office until the 30th October, 1619, when the Plantation of Ulster had been completed (S.P.I., 1603, 6, 61). Then he went back to London and wrote books ; but, on being elected to Parliament, spoke occasionally in advocacy of Ireland's claims. He was ultimately created Lord Chief Justice of England, and died on the day of his appointment. Chichester stayed in Ulster, and became a peer of broad estate, as Boyle, " the great Earl of Cork," did in Munster. Two more remarkable men than the Deputy and his Attorney-General never served together in Dublin. It was they moulded " legal " Ireland into shape.

The work done by Davies was prodigious. Labour is inseparable from legal stealth. The mass of documents, King's Letters, Commissions, Inquisitions, Returns (true and false), Surveys and Patents, which the corpulent Attorney-General superintended, amazes the modern lawyer. In addition, he went circuit, prosecuted " rebels " and acted as Judge. The mere scrivenery of confiscation undertaken by him would fill a volume. His toilsome drafting, without taking into account his research in legal arguments to support spoliation, can be appreciated only after a scrutiny of the Grants he passed, the Reports he published, and the despatches he penned, during fifteen years. Nor had he the help of a competent Solicitor-General in what he wrought. Jacob, who filled that office, is described as a gambling sot. Yet the salary of both was the same, viz. £159 6s. 8d. per annum (C.MS., 1611, p. 179); but the fees payable to Davies, to make a post of £3 a week worth keeping, must have been valuable. We know from a letter of Chichester to Cecil

(4th June, 1606) that a Judge of the Common Pleas received less than half the amount paid in fees to the Attorney-General (S.P.I., 494).

Chichester's salary as Deputy gave no excuse for malpractices. On the 16th October, 1604, a royal warrant to the Treasurer passed, to pay him "the fees and entertainment of his office, with £1,000 yearly in addition, and £500 as a gift for the outfit" (S.P.I., 1604, 206). Considering the purchasing power of money in those days and the razor-edged collection of "fees," Chichester was probably making nearly £20,000 a year, in to-day's values. Although enjoying so considerable an income, he continually plied Cecil with letters describing the poverty of Ireland, and his own inability to keep the Crown forces together. These despatches give no hint that he was then acquiring Crown escheats by furtive conveyances. Yet at the moment when he was enriching himself at the King's expense, the Deputy was pleading poverty as an excuse for the slackness of the Royal service.

In February, 1605-6, he complained: "He had not received half the sum required by the paymaster's estimate; and, though they had borrowed £5,600, which was not repaid, he saw no remedy but that the soldiers must fall on the country next to them." In May, 1606, he reported that: "He would not be able to retain the companies (soldiers) beyond the end of June." In July, 1606, he wrote that he "had engaged his own and his friends' credit for means to hold the companies together. . . . and now, as the money is otherwise disposed of, his poor credit is broken"; and he "is driven to spend much time, beside the hazard of his poor estate, in achieving means to furnish them."

This may have been intended to serve as an excuse if he were found out in wrongdoing. Throughout his correspondence with the Privy Council, it is nowhere avowed that he was a speculator in "escheats," or had acquired any land otherwise than by the direct and public licence of the King.

Chichester looked closely after his family interests as well as his own. He brought his brother and his two nephews (George Trevelyan and Arthur Bassett) from Devonshire to

settle on the lands from which he had expelled the natives. In June, 1605, he writes to John Trevelyan, of Devonshire, his brother-in-law : " Finding the uncertainty of our profession and means of raising of his fortunes and others of my blood by the course we begun in the wars, I have advised to settle them in part of the waste lands in the North within my government of Knockfergus, where they shall have some scope of ground to work on " (T.P. v. iii. p. 87).

He then petitioned the Earl of Devonshire (9th March, 1605-6) : " I humbly recommend George Trevelyan, who is my kinsman, being my ensign " (S.P.I., 437). Young Trevelyan arrived in Dublin in June, 1606, and informs his father that the Deputy " hath promised to bestow the wardship of Massareene upon me."

On the 19th July, 1606, Trevelyan writes that Chichester " will assure it by Patent if possibly he may. For I have had conference often touching the same, and if his lordship may procure it during my good behaviour it will be a reasonable settlement for me during my abode in this Irish land. Also he intends, if this may be gotten, to procure some three or four townlands for some reasonable rent adjoined thereunto " (T.P. v. iii. p. 90). His policy was to surround himself with men bound to him by ties of blood or local association. He was a staunch man to his friends, and their letters sometimes reveal a quiet confidence in his firmness.

The Attorney-General was blindly devoted to the Deputy's interests, public and private. Wily as was the procedure of Davies, the records cannot hide the fact that he often preferred the profit of his master in Dublin to the service of his master in London.

CHAPTER VIII.

A SCOTTISH FAVOURITE.

To one like Chichester so fond of kith and kin and county, the incursion of men from beyond the Tweed, who followed in the train of the new King, was abhorrent. His jealousy of the Scotch favourites of James I. showed itself both before and after his appointment as Deputy. Especially was he suspicious of Mr. James Hamilton, who, as mentioned in the quotation from the Life of Sir Thomas Smith, was accused of greed and malpractice in acquiring Irish lands belonging to that worthy. Chichester writes to Cecil on the 8th June, 1604: "Has obtained for Captain Thomas Phillips from the Lord Deputy, at Cecil's desire, a custodiam of the Abbey of Coleraine, upon the Bann-side, which, with some small proportion of lands, is exempted from Sir Randal MacDonnell in his Patent, as being commodious for the garrison if there be troubles, or for a corporate town, whereby to subject that long-barbarous and stiff-necked people. . . . He thinks it were better bestowed upon Captain Phillips, unto whom it is well known, than on a Scotchman who is said to be a suitor for it. . . . Upon his return thither, found several companies of rebels . . . which he has broken; and killed and hanged above the third man (sic) and the Earl of Tyrone has done alike with those upon his border, not sparing his own nephew, whom he took and hanged, and so, God be thanked, they are in reasonable quiet" (S.P.I., 178). This imputed sternness of O'Neill's was recorded with a double object—to disgust Court opinion at an act of justice unnaturally performed, and to screen the Deputy himself. Chichester hanged O'Neill's favourite nephew, for a fatal

blow delivered in a broil, probably in self-defence, disregarding the Earl's appeals for a reprieve (M.A., 207). Except through Cecil, no counter-version could reach the King.

Where, however, Scotchmen were concerned there was direct access to the Royal closet, and James Hamilton proved to be Chichester's match.

In a "Memorial" to Cecil of August, 1604, Chichester boasts of having blocked one of this Scotchman's attempted feats: "The Manor of Trim is not passed, although the Scot thought to have comprised it in his grant of Moygare, as though Moygare and Trim had been all one, whereas indeed they are two distinct manors" (S.P.I., 195).

After his installation as Deputy, he breaks out against the "Scot," and on the 19th June, 1605, bitterly complains to Cecil, as well he might. For now, possessions that he specially coveted were being swept away before his eyes. This is a historic letter. It sets out that while a grant to himself was delayed and challenged, Hamilton was royally favoured and was trying to prejudice him: "The King's grants daily increase. There is come hither one Mr. James Hamilton with two letters from the King; one containing a gift of £100 land in fee farm, in the name of Thomas Irelande; the other for passing to him the Great Ardes, or Upper Claneboy —by virtue of which words, if he have his desires, he will have more lands than the greatest lords in that kingdom; and all is given in free and common soccage, whereby His Majesty's tenures are lost and everywhere abridged. If copies of these Letters be called for, the grants will be found to be extraordinary. When he (Chichester) was in England, it pleased the King, by your means, to bestow upon him the Castle of Belfast and other lands adjoining. He had passed it twice, and as yet, he understands by this gentleman [Hamilton]—who, it seems, has sought all the records—there are some questions may be made thereon, by reason of some grants made long since to Sir Thomas Smith. For albeit that Deed be of no force, yet, not being so found void in the 'office,' as the records of those Deeds were not in this Kingdom, he is subject to danger. Prays, therefore, that one

letter more may be granted to him for re-passing the same" (S.P.I., 294).

Cecil was then grumbling at the un-Scottish unthrift of the new reign. On the 9th March, 1605, he wrote to Sir T. Lake: "The Queen is cajoled by corrupt servants into pressing the King for suits for other men's advantage, in which she has no interest. . . . Am hawking with . . . Devonshire" (S.P.E., 203).

It was idle, however, for either Cecil or Chichester to complain of any extravagance from which Hamilton might benefit. That personage, although already loaded with favours, came over to Dublin to press suits which might prejudice the Deputy, and was soon to become a great Irish notable. His subsequent collaboration with Chichester in the fabrication of Letters Patent after they became friends, forms one of the strangest pages in Anglo-Irish history.

James Hamilton was the son of a clergyman of Dunlop, Ayrshire; and it should be stated that he was no relation (although a friend) of the James Hamilton who afterwards became Earl of Abercorn. He crossed to Ireland so far back as 1587 as a spy for the King of Scots on the doings of the Elizabethans. In Queen Elizabeth's reign Hamilton, with another Scotch spy (James Fullerton) was a student in Trinity College, Dublin; and later became usher in a Latin School in Ship Street, near Dublin Castle, of which Fullerton was principal.

They were both Fellows of Trinity College in 1596; but the supposition that Hamilton was a Fellow in 1569 (H.U.I., 18-24) is probably due to a misprint. James Hamilton, who became Lord Claneboy, was born in 1559, and died in 1643.

Fullerton took less Irish land by his espials than Hamilton; but he did well nevertheless, and was subsequently knighted, created Muster Master General for Ireland, Clerk of the Cheques (E., 249), and in England was a high favourite at the Court of James I. The joint business of Hamilton and Fullerton in Ireland, originally was to keep up relations with the nobility and gentry, to quiet the suspicions of Protestants as to Scottish intrigues with O'Neill, and to promote

a Stuart succession to the Crowns of England and Ireland. Their task was difficult and often dangerous.

Hamilton was in the pay of Elizabeth as well as of James, but in those days no one scrupled to take his hire from clashing kingdoms. We catch a glimpse of him in August, 1600, "riding post to London," from a "Declaration" of Robert Montgomery in the Calendar of Border Papers (p. 680). His rides were many, and his quest high.

In March, 1601, a year before Elizabeth's death, we find Hamilton promising Cecil: "To bar the rebels in Ulster"; and asking "for a letter to the Treasurer of Ireland, for letters of exchange, both for such base money as doth now lie upon their hands, and for such as from time to time they shall receive for their victuals and merchandise. . . . Her Highness being the king who, next his Master, he doth most honour and is desirous to serve" (S.P.I., 257).

That it was not then unusual to take pay from both sides is clear from the fact that "Salisbury himself, like most of his colleagues, received a secret pension from the King of Spain" (E.U.S., p. 111).

Hamilton was suspected at the Scottish Court, for the Dean of Limerick, Dionysius Campbell, wrote to Cecil on the 27th March, 1601, from Edinburgh: "Mr. Hamilton is under great jealousy by reason of many surmises suggested against him by his adversaries during his absence . . . the King taking for excuse that he hath sent to inquire of his course in England, whereof he must be very well pleased" (S.P.I., 243). At Elizabeth's death a Scotch succession to the Crown chanced to consort with English statecraft; and James, as Monarch of a United Kingdom, rewarded the services of his spies with royal recompense.

The grant to Hamilton, which provoked the protest in Chichester's letter to Cecil of June 19th, 1605, was not the beginning of his rewards. An earlier concession had been made to him soon after James came to the throne (24th March, 1603). This first grant (6th November, 1603) entitled him to transport 1200 packs of yarn out of Ireland. It was not a big business, but it attested his influence; and he continually passed and repassed to England, seeking or

securing fresh favours from his royal countryman. Chichester's antipathy towards him burns through the letters of 1604 and 1605. Then there came a sudden change, and we find the Deputy not only commending Hamilton to Cecil, but passing huge concessions to "the Scot." Jealousy was transmuted into favour, and a working partnership established. What was the secret of this change of sentiment? The transactions between Chichester and Hamilton take us back to an event which occurred a year before Chichester became Deputy, and for which he is not responsible.

When Lord Mountjoy left Ireland in May, 1603, Sir George Carey, as already mentioned, acted as Deputy. On the 8th November, 1603, a King's Letter arrived in Dublin addressed to the Earl of Devonshire and Sir George Carey, which may be regarded as the starting-point of the frauds of their successor. This, and another King's Letter of the 16th December, 1604, are the foundation and cornerstone of his exploits. Both fell into the hands of, and were first misused by, James Hamilton. What are called "King's Letters" were the warrants despatched from the "Signet Office" in London, to authorise the issue of Patents under the Great Seal of Ireland. They contained, in a condensed form, the substance of the grant, which was afterwards expanded into a Patent under the supervision of the Law Officers in Dublin. That of the 8th November, 1603, ran:

"In regard, as well of some services done the King, as of a sum of money to be paid, by the King's orders, to an ancient and well-deserving servant in Scotland, a grant be made to Mr. John Wakeman, his heirs and assigns, in fee-simple, of so much of the lands in the King's hands as shall amount to the clear yearly value of £100 English, reserving only a rose, or such like acknowledgment, without any other rent" (E. 28 and S.P.I., 104).

On this authority, Letters Patent issued on the 28th February, 1603 (the Julian year ended 24th March—hence November, 1603, was prior to February, 1603, and we should now indicate it as "February, 1603-4"). The Patent gave Wakeman lands enormously in excess of the value allowed by the King's Letter, viz.:

" St. Mary's Abbey, near Dublin, with all its hereditaments, lying in the towns suburbs and field of Dublin, Clondalkin, Dalkey, Howth, Correston, Kilmannagh, Huntstown, Clonsilla, Donany, Slanduff, Ellestonread, Ballilug, Grenocke, Bullestowne, Callestown, Greatebraiston, Dunboyne, Gibbestowne, Knightown in Margallen, Ballincurrie, Diserlinlagh, Gallawaie, and Coldreni, at 10s. rent, within the Kingdom of Ireland. The churches, rectories and chapels of Clonsilla, Ballicurrie, Diserlinlagh, Fertullagh, Fasaghrebane, Catherlagh, Kilcarne, Portlomen, Protshangan, Rughagh, Mascreame, and Knockragh. The tithes of St. Glanocke and the demesne lands in Ireland of St. Mary's Abbey. The tithes of Ballybough and Grange of Clonliffe in Co. Dublin with all houses, tithes, etc., belonging to the said Abbey, churches, chapels, within the said places ; all woods, etc., with the ground and soil thereof, etc. To hold forever, by fealty only " (E., 2).

This was a shameful rapacity, but Chichester was not implicated in that grant. It passed lands worth " nigh a thousand a year " on a " King's Letter " which only authorised a gift of £100 a year. Afterwards this King's Letter was made the pretext of other valuable grants on the pretence that it still remained unsatisfied. Property which had been conferred on the Earl of Ormonde by Elizabeth was conveyed by Wakeman's Patent, and thus both Crown and subject were injured. The Earl of Ormonde had prayed for a lease of Mary's Abbey from Burleigh on 6th June, 1574 (S.P.I., 28). It was granted him in 1575. A judgment of the Barons of the Exchequer, about 1623, exposed the " Wakeman " trick on Ormonde, and will be cited later on. Details must be meanwhile given, in order that its bearing on the capture of Lough Neagh and the Bann by Chichester may be appreciated.

St. Mary's Abbey was a Cistercian Monastery, and had been the most richly endowed in Ireland. It was founded before the conquest by an Irish Prince, being afterwards enriched by many grants from English Sovereigns. This Abbey probably played a part in the twelfth century in bringing about the Norman invasion. When Ireland was

independent it was, by order of the parent-house of the Cistercians of Citeaux, in France, placed under the jurisdiction of the English monastery of Bildwas in Shropshire. On Henry II.'s coming he was accompanied to the Synod of Cashel by a priest from St. Mary's Abbey, who interpreted for him, and doubtless expounded the alleged Bull of Pope Adrian on which he relied to justify his invasion (G. St. M.). From then onwards the Abbey was officially favoured. There Deputies often lodged, and its monks exercised hospitality towards English strangers and others resorting to Dublin. It was not included amongst the twelve monasteries originally confiscated by Henry VIII. by the Irish Act of 1537.

It fell, five years later, when the Priory of Kilmainham and all other Irish Monasteries were suppressed by the Act of 1542 (33 Henry VIII. c. 5), although Deputy Leonard Gray made a strong effort on public grounds to protect St. Mary's Abbey. Its lands then became a sort of royal storehouse from which grants to favourites were dispensed by "King's Letters" as if its possessions were inexhaustible.

James I. treated this "escheat" as a kind of quarry from which blocks could be hewn at pleasure to satisfy the demands of his parasites. Elizabeth's lease to Ormonde was ignored.

The appetite of John Wakeman was quite unsurfeited by the slices of Abbey lands awarded him on 28th February, 1603-4. Five days later (5th March, 1603-4) he received a second grant, viz. "The manor of Donnamore, the site of the manor of Ratowth, with the orchards and gardens there, 16 acres pasture, 340½ acres arable, Heynot's lands 13 acres, le Mawdelin's, 40 acres, in Co. Meath, the rectory and church of Killagh in Co. Kilkenny, with the corn tithes collected annually, by sixteen bushels of wheat and oats, Kilkenny measure, the towns or hamlets of Ballingraunge and Ballinerly, and in Ballingraunge, 2 messuages, 72 acres arable, 7 acres pasture, 8 acres bog; and in Ballinerly, 18 acres arable, 1 acre pasture, in Co. Westmeath; with the tithes, etc., and other manorial rights" (E., 23).

No one could pretend that these Patents did not more than discharge the King's Letter in favour of Wakeman.

The then Deputy, Sir George Carey, and his legal advisers, evidently thought so. For, during the remainder of Carey's term of office we hear of no more gifts to Wakeman. Chichester was sworn in Deputy on the 24th February, 1604-5 ; and when scarcely a year in office he proceeded to pirate the exhausted " King's Letter " of 8th November, 1603, and passed three grants of great value on foot of it in Wakeman's name on the 2nd March, 1605-6.

His complicity is established by the share which he took of the plunder. That of his instrument Wakeman is a matter of more obscurity. John Wakeman was the grandnephew of the last abbot of Tewkesbury. In 1608 he was lord of the Manor of Beckford, Aston, and Tibleston in Gloucester. It is stated that in 1677 " the present lord (Benedict Wakeman) keeps a Court-leet, and has a very handsome large seat near the church. He has the tithes of Grafton, Beckford, and Didcot, and is impropriator." (G.R., 243, G.A. and G.F.).

John Wakeman was therefore a person of consequence in 1603-6, but it is probable that Chichester at first merely used his name as a blind, for there is no evidence that in the earlier transactions he shared in the booty. Bribes he may have received ; but so far as land is concerned, the Deputy and Hamilton were the only persons who profited. After the Earl of Devonshire's death in April, 1606, Chichester tried to saddle the late Lord Lieutenant with responsibility for the subsequent grants to Wakeman, and impliedly with being a partner in his own wrong-doing. Research fails to convince the investigator of the truth of these imputations against Devonshire. On the other hand, the evidence against Chichester is complete, and his guilt is made more odious by the mawkish self-righteousness with which his correspondence teems. Devonshire had contracted an irregular marriage three months before his death, and possibly, therefore, his memory suffered more easily from detractors. Even Archbishop Laud, who, as a minor clergyman, celebrated this marriage, attacked Devonshire, but wrote copiously congratulating Chichester, when kingly whitewash cleansed him of charges made by Catholic loyalists. The connection between the Earl's family and Wakeman is shown by the

fact that, when Sir C. Blount was attainted, his manor of Tainton (Gloucester) was granted to Sir Simon Weston and John Wakeman, in 1603 (R.G., 725). That the original King's Letter may have been issued in Devonshire's interest, is possible. The name of one of his servants at Wanstead Manor in 1604, " Mr. Earth " (S.P.I., 150) is mentioned in a note about St. Mary's Abbey lands, written to Hamilton by his brother, sixteen years after Devonshire's death.

Before Chichester began to tamper with the issue of Patents, he despatched Sir John Davies with Sir Richard Cook to London. Davies bore with him a weighty letter of commendation to Cecil from the Deputy (3rd April, 1605) : ". . . These gentlemen go hence fully entrusted in the affairs of this Kingdom. Beseeches his Lordship to take notice of the industrious pains which Sir John Davies has demonstrated by his toilsome travels through most parts of the Kingdom, and which have produced good show of obedience and sown duty in the hearts of many thousands. Hopes he will hasten him back to them. . . . Has sent him a brace of the fairest dogs this Kingdom affords, and will henceforth have some in more readiness when he sends for them.

" The Lord Chancellor is upon the point of departing this life. He will seize on the Seal as soon as the breath is out of his body, hoping that some speedy course will be taken to ease him of the charge of it, and prays God to send them such a one as is fit and worthy of the place " (S.P.I., 270).

The dying Chancellor was Archbishop Adam Loftus, who went to his reward on the 5th April, 1605. He was succeeded by his kinsman, Thomas Jones, Bishop of Meath. Jones held the Great Seal as Chancellor and Archbishop of Dublin during the remainder of Chichester's Deputyship. Dean Swift describes him as " the rascal Jones " because he pocketed fines for Church lands, which he leased at " a twentieth part of their value " (L.M., vol. ii. pt. 5, p. 549). His subsequent dexterities with the Seal were rewarded by the Deputy with the Manor of Trim, which, in 1604, Chichester boasted he had rescued from " the Scot."

CHAPTER IX.

THE INN-KEEPER OF THE "HALF MOON."

THE excesses committed by Chichester in the use of an exhausted "King's Letter" were not limited to the case of John Wakeman. A second King's Letter was wrested by him to the prejudice of the Crown with still more serious results. This bears a curious history.

By Letter of the 6th December, 1604, James I., in consideration of £1,678 6s. 8d. alleged to have been paid into the Exchequer of England by "Mr. Thomas Irelande, of London, Merchant," authorised Irelande or his nominee to receive a grant of "So much of our Castles, Manors, etc., which will come to us by surrender, forfeiture, attainder, etc., as shall amount to the clear yearly value of £100 English, whereof the manor of Moygare, and so much of the lands in the Two Ardes in the Province of Ulster, as he or his nominee shall think fit to be parcel" (E., 244).

This Letter, wielded by Hamilton, was that of which Chichester complained to Cecil on the 19th June, 1605. Yet what he then denounced was to become the Deputy's principal instrument of aggrandisement. By its agency the design for the capture of Lough Neagh and the Bann (non-tidal) was carried out. The *modus operandi* has never hitherto been laid bare, although three centuries have elapsed since the trick was attempted. Let us examine the consideration for the grant and the status of the grantee. £1,678 6s. 8d. was an enormous sum in those days; and who was Thomas Irelande? Incredible as it may appear, he was just a Scotch tavern-keeper at the sign of the "Half Moon" in Bow Lane, London—a very unlikely person to

make such a payment. It was not easy, after 300 years, to trace this " merchant " prodigal, but fortunately the *Border Papers* furnish the clue. There one George Montgomery deposes that, having ridden from Edinburgh with a companion in August, 1600, they put up at an inn on reaching London ; and as his comrade was setting out for Paris they changed lodgings : "And I being a stranger without acquaintance, he conveyed me, before leaving, to Thomas Irelande's in Bow Lane, at the sign of the ' Half Moon,' where Scotsmen used to lie. . . . Met John Hay, with whom I was acquainted, in Irelande's house. . . . Mr. James Hamilton, Scotsman, presently in London, knows me. I met him on the way, riding post to London " (C.B.P., 680).

The grant to this Scotch inn-keeper, Thomas Irelande, is the root of title to Lough Neagh. The King's Letter in his favor is sadly lacking in detail. Even his address is withheld ; and the description of him as a " merchant " is deceptive. Nor is the date or the reason for his supposed payment given. If this generous publican made the State a present of £1,678 6s. 8d. in 1604, the fact should be entered on the Exchequer Rolls. These Rolls are preserved in the London Record Office, but have not yet been indexed or printed. A search amongst those dreary documents did not disclose the Scottish tapster as a contributor to King James, but it is not pretended that it was exhaustive, and fuller investigation is left for the pursuit of more minute inquirers.

Chichester of course regarded Thomas Irelande's £1,678 6s. 8d. as a legal fiction, and hence his anger was kindled against Hamilton. He issued no Patent on this King's Letter for months, in order to thwart " the Scot." But Mr. James Hamilton was not easily baffled. His proceedings were most methodical. First, he took a transfer to himself from his hotel-keeper, Mr. T. Irelande, of all the benefits to accrue under the King's Letter. Then he carefully enrolled the assignment in the Irish Chancery, and so, by formal record, notified the Deputy that James Hamilton, Esq., was entitled to take any grants which the Letter empowered Mr. Thomas Irelande or his nominee to receive (E. 194, 244). The assignment to Hamilton conceals from the inquisitive

what the Half-Moonlighter received for his rights. It recites merely that Thomas Irelande parted with them for "divers good considerations." On the 20th July, 1605, Hamilton received as Irelande's nominee a Patent not only for the manor of Moygare, Co. Meath, and of the Ardes, Co. Down; but the Priory of Coleraine, in Antrim, with a day's fishing in the Bann; the Priory of Holywood, in Down; islands in the Bay of Carrickfergus; Rectories in Lecale, Co. Down; and the tithes of Rathlin Island, etc., being chiefly or entirely the possessions of dissolved monasteries.

Chichester's missive to Cecil, complaining of the grant as "extraordinary," was despatched a month before the Patent issued. Unfortunately, while Cecil preserved the Deputy's correspondence, Chichester kept few of Cecil's replies; and we can only infer the nature of Cecil's answer from the Deputy's subsequent conduct. Twice had Chichester appealed to the prudent Cecil about Hamilton, and to his third letter must have come a reply containing much good advice. No more was Hamilton thwarted in his grants by the Deputy, and a close co-operation in plunder was established between them. His procedure was entirely changed, and Chichester and "the Scot" became sworn friends thereafter.

The first evidence of relenting is contained in a letter to Cecil of the 29th October, 1605. Chichester is complaining of the ruinous condition of Toome Castle, and adds: "A matter of ten groats or some shillings a day will encourage an honest kinsman of mine to settle upon that place, by taking some lands from Mr. Hamilton there, which he passeth upon his Book. . . . Has confirmed the Abbey of Coleraine to Captain Phillips, albeit he paid for it by passing it in Mr. Hamilton's Book of fee-farm" (S.P.I., 341).

Sir Anthony Weldon, in his *Court and Character of King James I.* ("published by authority" in 1650), draws a vivid picture of Scots intrigue for grants at this period, and suggests that Cecil was involved therein. His accounts are not always trustworthy, but his conclusion as to the methods then prevailing is otherwise corroborated (p. 273):

"Salisbury did one trick to get the kernel, and leave the

Scots but the shell, yet cast all the envie on them ; he would make them buy Books of Fee-farms, some £100 per annum, some one hundred marks, and he would compound with them for £1000, which they were willing to embrace, because they were sure to have them pass without any control or charge, and £1000 appeared to them that never saw ten pound before, an inexhaustible treasure ; then would Salisbury fill up this Book with such prime Land as should be worth ten or twenty thousand pound, which was easie for him, being Treasurer, so to do, and by this means Salisbury enriched himself infinitely, yet cast the envie on the Scots, in whose names these Books appeared, and are still on record to all posterity ; though Salisbury had the Honey, they poor gentlemen but part of the Wax . . . so was the poor King and State cheated on all hands."

So far as Ireland is concerned, there is no evidence that Cecil got any of the spoil, beyond a stray present of hawk or hound ; whereas the Scots " poor gentlemen " largely enriched themselves by his " Books."

Hamilton's grant of lands in the Great Ardes, to which Chichester had taken exception by letter of 19th June, 1605, to Cecil, was sanctioned by Patent of 5th November, 1605. It grants to James Hamilton " the territory of Upper Claneboy and the Great Ardes, whereof MacBrian O'Neill and his father were possessed. Hamilton to have liberty to import corn and commodities from England, etc., to enable him to inhabit same with English or Scotch men . . . at £100 rent and 10 horsemen and 20 footmen at every general hosting. A Commission to issue to some of the King's learned counsel there, and the Surveyor and Escheator General, for to inquire by Inquisition of the state, contents, and limits of the territories, and thereupon Letters Patents to be passed without delay " (S.P.I., 271).

This grant had a curious prelude. Sir Con MacBrian O'Neill had escaped from Carrickfergus Castle, where Chichester confined him on a flimsy charge of treason (brought with a view to seizing his lands), and bargained to give half his estate to Hugh Montgomery, the laird of Braidstones in Scotland, who helped him to break prison and

received him hospitably when he arrived from Ireland. Together Sir Con and Montgomery afterwards travelled to London, where Montgomery's brother was Court Chaplain to King James. Their purpose was to crave pardon for Sir Con, and royal sanction for the partition of his estate with Montgomery. But " Sir James Fullerton, a great favourite, who loved ready money, begged his Majesty that Mr. James Hamilton, who had furnished himself for some years past, with intelligence from Dublin very important to his Majesty, might be admitted to a third share " (M. MS., 30). James I. yielded, and Sir Con was thus left with only a third of his land. Chichester, who originally hoped to seize it all for himself, at first blocked the issue of the Patent to Hamilton, but allowed it to pass on 5th November, 1606 (E., 197), after they had come to a working agreement.

Hamilton's relations with the Deputy being now cemented, he undertook to act as Chichester's nominee, and to allow grants intended for the Deputy to be passed in his own (Hamilton's) name. To carry this out, they utilised the exhausted King's Letters to Thomas Irelande and John Wakeman, so that on these spent instruments numerous Patents, partly for Chichester's profit and partly for Hamilton's, were wrongfully issued. No less than ten Patents in Hamilton's name had their origin in this way, five being issued on the Wakeman letter and five on Thomas Irelande's.

The first stroke of the conspirators, after the alliance was established, was very audacious. Its sweep now nearly takes the breath away, and its illegality then was most glaring. This was the grant to Hamilton of a Patent (on a Thomas Irelande letter) on the 14th February, 1605-6, of a huge territory which included the astounding gift of Lough Neagh and the River Bann, as far as the Salmon-Leap at Coleraine.

The King's Letter to Irelande authorised no such grant. It was limited to one of £100 a year, and had been amply and otherwise satisfied. The fact of the making of the Patent was kept secret from James I. and his London advisers. Never till the hour of his death did the King become aware that his Deputy had purloined these great waters; and

never in his life did the Deputy frankly proclaim or acknowledge before the King that he pretended to be their owner.

The only Letter of James I. in Chichester's favour, which touches Lough Neagh and the Bann, is that of 1620; but it confers no grant such as that contained in the Patent then constructed upon its foundation. Of that hereafter.

The Patent of 1605-6, besides giving away Lough Neagh and the Bann, disposed of a gigantic property. It conveyed territories in Antrim, Down, Carlow, and Roscommon—viz. Maghermorne, Ballinmowre, Moylinny, Ballinlinny, Clandermot, Derryvolgie, Grange, with tithes; the lands of Castle Toome, the Friary of St. Augustine, and other lands in Co. Antrim, the advowsons of five Rectories in Lower Claneboy, the Abbey of Cumber with seven townlands, a number of Granges and Rectories in Co. Down, a waterfall and 31 tenements in Co. Carlow, a castle and ploughlands in Co. Roscommon.

Then, as a sort of *hors d'œuvre* comes the gift of Lough Neagh and the River Bann—viz. "All the fishing of whatever kind of and in the pool of Lough Eaugh (*sic*) otherwise Sidney, and in the River Bann up to the rock and fall of water called the Salmon Leap, in the counties of Down, Tyrone, and Antrim aforesaid, and in the country and county of Coleraine [Derry], and the confines thereof, in parts of Ulster, together with certain ancient weirs for the taking of eels in and upon the River Bann aforesaid, and near to Castle Toome in Co.

And full right and liberty of taking and carrying away or exporting salmon and every kind of fish, in the said pool of Lough Eagh (*sic*) and the River Bann, within the limits aforesaid, and the ground and soil of same, and any of them, with their appurtenances; and also full power of approaching the banks of the said pool and river, from every direction within the limits aforesaid; and setting nets, and other things necessary for fishing; and doing all things which shall be requisite for enjoying the premises; together with all islands in the pool and river aforesaid; which things are of the annual value, after deductions, of 12s. 6d., as appears upon the supervision" (E., 213).

For this noble estate (in order further to defraud the Crown)

the miserable rent of £26 19s. 1¼d. was reserved, 12s. 6d. of which was applotted on the fishery parcel. The Deputy's precision is seen in the " farthing " in the total rental.

That a grant of " the fishing of and in the pool of Lough Neagh " conveyed the bed and soil of the entire Lough, twenty miles long and almost twelve wide, containing nearly a hundred thousand acres, no one outside a Court of Justice would be asked to believe. This was not the draftsmanship of the precisians of the seventeenth century. When getting property from the Crown they left nothing in doubt. In their conception, the " pool of Lough Neagh " did not mean the whole Lough with its bed and soil. If they meant to convey Lough Neagh, with its entire circumference, they would have said so. Moreover, the ridiculous rent of 12s. 6d. destroys the theory that this represented the King's profit for the entire Lough, with the rich River Bann thrown in.

Before Lough Neagh and the Bann could be given away (assuming the Patent to be valid), some proof should be forthcoming that the fishings belonged to the Crown (B. *v.* C.). Lough Neagh was never " in charge " in the Exchequer as yielding rent to the Crown, prior to the Hamilton Patent. No Act or entry exists showing it to be Crown property previous thereto. Ulster had then only just been conquered from the Irish, and though elsewhere there had been settlements by the Normans De Courcy and De Lacy, there could not have been any ancient Crown title to Lough Neagh. Some document was necessary to prove that its fisheries formed portion of the royal demesne at the time of Hamilton's grant. The paper title then existing actually negatived a Crown right in the entire Lough. An Inquisition was held seven months before the Patent issued ; and the verdict taken upon it, alleged that Monastery fishings in Lough Neagh " towards Claneboy " had been seized by the Crown. The inquiry never dealt with the Lough as a whole. Hamilton's Patent could not be supported by an " office " confined to riparian fishings, abutting on property in Co. Antrim confiscated from monks, who certainly never owned Lough Neagh. Yet this is the only Crown " title " that is alleged.

This Inquisition was taken in the town of Antrim on the

12th July, 1605, upon a commission to ascertain the boundaries of Sir Con MacBrian O'Neill's estate, which was about to be divided between Sir James Hamilton, Sir Hugh Montgomery, and Sir Con himself; and to declare the ecclesiastical confiscations therein. The Commissioners sat at Ardwhin, Co. Down, on the 4th July, 1605, to take "office" for the Down portion of the territory, and came to Antrim a week later. The transcript of their verdict as to Co. Antrim covers two hundred folios; and every "parcel" dealt with, lies in that county. The possessions which the dissolved monasteries of other counties held in Antrim are enumerated; and this makes still clearer the fact that Co. Antrim property alone was being investigated.

The findings as to Lough Neagh are, therefore, limited to that portion of the Lough which washed the Antrim shore. A précis of the Inquisition is printed in the 26th Report of the Irish Public Records of 1894. Age and contractions make it hard to decipher, but the translation from the Latin is the work of the late Mr. Alfred J. Fetherstonhaugh, I.R.O., a brilliant scholar (Senior Moderator in Classics, and University Student in Classics, T.C.D., 1885), who died a generation before any controversy as to its meaning arose. The plan on which the Inquisition proceeded, shows the object the Commissioners had in view.

They were not concerned with Lough Neagh, but met to define the boundaries of Lower Claneboy, and of the twenty "tuoghs" and "cinaments" which made up that territory. The "office" also dealt with the ecclesiastical property of fifteen dissolved monasteries and religious houses owning lands in Claneboy, but any reference to Lough Neagh is only casually introduced into the findings. This is shown by the framework of the verdict:

"The Jurors further say that Bryan Boy O'Maghallow, of the late house of Regular Canons of Muckmaire, at the time of its dissolution, was seised of the site of the priory and eight townlands, bounded east by the brook Owen Clary; north, the same brook to the Owen ne View or Six Mile Water to Lough Neagh; south, etc., the stream Owen-Ballyerrenan to Lough Neagh; west, Lough Neagh. The Prior was also

seised of a free fishing of salmon, eels, and other fishes in all waters within these townlands. . . . There is on the land of the priory an old castle called Cloghanmabree or Castlemoubray almost overthrown. Queen Elizabeth was seised of the dissolved priory and possessions, which are worth yearly 51s.

" Queen Elizabeth was also seised of all fishings of salmon, eels, and other fishes on Lough Neagh towards Claneboy, and old eel wears on the River Bann near Castle [Toome] and of a free fishing of eels, salmon, and other fish in the same river ; worth yearly 13s. 4d. . . .

" Shane O'Boyle, prior of the house of Friars Preachers of the Order of St. Dominic of Colrane, at the time of dissolution, was seised of the site of the priory ; and a fishery in the Bann for one day in each year (Monday after the Nativity of St. John the Baptist), receiving all fish caught in the river on that day ; also one salmon on every day during the fishing season from each fisherman. The premises are worth yearly 40s. Irish. . . . All the premises belong to King James in right of his crown."

This finding it is clear was limited to a riparian fishery, and did not embrace the entire of Lough Neagh. It is equally evident that the jurors had in their mind the fact that the fishery was appurtenant to some local religious foundation. No one could suppose that an Antrim jury were being called on to negative riparian rights on distant shores in Tyrone, Derry, Down, and Armagh. The Ardwhin jurors in Co. Down (where the Commissioners sat a week before), were not asked to find " office " respecting Lough Neagh ; and this reinforces the argument that what the Antrim " office " dealt with was a local Antrim riparian fishery. Every legal consideration points to that conclusion. Yet the Inquisition of Antrim is the only " office " which was taken, to justify the grant of the entire of Lough Neagh.

Instead of helping such a claim, its terms strongly support the view that the Patent of the 14th February, 1605-6, conveyed only a " pool " in the Lough which washed the lands granted to Hamilton. Another translation of the Antrim Inquisition was put forward to support the assertion that

the entire Lough was conveyed. This, however, is more adverse to the Chichester title than that just quoted. It confines the verdict for the Crown to "that moiety of the pool of Lough Neagh which lies towards the East parcel of Claneboy." Let us now see the translation on behalf of the Chichester interest. It is :

"Our said late Lady the Queen in her lifetime was likewise seised in her demesne as of fee in right of her Crown of England of and in all manner of fishing both of salmon as well as of eels and other fish in and upon all that moiety of the pool of Lough Eaugh aforesaid which lies towards the East parcel of Claneboy aforesaid in the County aforesaid, and in certain ancient weares for taking eels (in English, eel weirs), in and upon the river Bann near Castle [Toome] aforesaid and of and in a certain free fishing for eels salmon and other fish therein in and upon the said river in Claneboy aforesaid in the county aforesaid which is of the value after deductions of 13s. 4d. per year" (O'N. *v.* J. 105).

No unprejudiced person, and no lawyer however prejudiced, could pretend that this referred to any part of Lough Neagh or of the River Bann except the portion which lay in Claneboy. The Antrim inquisition is a Claneboy inquisition and nothing else. This can be tested as to Lough Neagh by its wording as to the Bann, and as to the Bann by its wording as to Lough Neagh. The jurors did not find the entire River Bann to be Crown Property, but only certain fishings therein. Yet their finding is the sole basis of the Hamilton grant for the Bann. Still it is plain they merely dealt with the part of the stream in Claneboy, but as the verdict does not find the entire of Lough Neagh to be Crown property the result is equally clear. The jury held neither Lough nor river to be the King's, but merely certain limited portions of their waters which wash Claneboy. It follows that Lough Neagh was not the King's to grant, even had the Patent really represented the Royal will.

This Inquisition was the first held in Co. Antrim. The first for Co. Down was that at Ardwhin. It advanced Chichester's designs in each county to drag Smith's grant into both findings.

CHAPTER X.

THE WILES OF THE PATENT-MONGERS.

CHICHESTER was not satisfied even by the absorption of Lough Neagh and the Bann. Within a fortnight he turned to other acquisitions; and, under the Wakeman "Letter," which had been extinct for two years, a Patent was passed on the 2nd March, 1605-6, for the tidal portion of the Bann, from the Salmon-Leap at Coleraine to the high sea. Chichester in later years pretended that Wakeman acted as trustee for the Earl of Devonshire in respect of this grant. He might have included it in the Patent made a few days earlier, under which Lough Neagh and the non-tidal Bann were captured by means of Thomas Irelande's Letter, but as the river on the Derry shore bounded the territory of Hugh O'Neill, Earl of Tyrone, the Deputy evidently did not feel safe in annexing it in that way. "Devonshire was Tyrone's most thorough-going supporter at Court," says Mr. Bagwell (I.S., 33).

While Devonshire's warlike methods against O'Neill were merciless he was scrupulously honourable to him in defeat. No allegation was made until after Devonshire's death (3rd April, 1606), that the Wakeman grant was issued in his interest. Chichester knew that Devonshire was in bad health and could not live long, when the principal Patents to Wakeman were passed. He, therefore, utilised the King's Letter to despoil O'Neill, and saddled Devonshire with responsibility for it. In the winter of 1605-6, Devonshire wrote to Cecil, excusing himself from attending on the King on the ground of illness; and his intimates felt that he was a doomed man.

At the moment when Chichester and Hamilton were concerting the annexation of the fisheries, the Earl of Tyrone's Secretary (O'Hagan) was in London, and there saw the Earl of Devonshire. On the 17th March, 1605-6 (a fortnight before his death), Devonshire wrote to Cecil: "Henry O'Hagan is now in London; will endeavour to find out where he is" (C.S.P. Dom., 301). O'Hagan had been O'Neill's envoy to Holyrood, after the victory in 1598 over Elizabeth's forces at the Blackwater; and King James was then offered the Crown of Ireland by O'Hagan on O'Neill's behalf, and solicited to furnish the Irish with supplies. In 1605-6 O'Hagan was departing for the Continent, but evidently visited Devonshire before leaving. This, and the fact of Devonshire's fatal illness, make all the more unlikely the suggestion, afterwards put forward by Chichester, that Devonshire was the person really interested in the grant to Wakeman; and, necessarily, that he was then scheming to seize O'Neill's fishery. O'Neill, writing to the King (17th June, 1606), mourns his loss:

"Since the Lord Lieutenant was dead whom he had ever found his very good lord" (S.P.I., 549).

As Lord Mountjoy, Devonshire had made the treaty of Mellifont with O'Neill in March, 1602-3, and guaranteed him all his former estates. He sanctioned the Patent which O'Neill received after his pardon by James I., and resisted the pressure of other commanders to diminish O'Neill's territory, by carving out of it the lands watered by the Bann. These were claimed by Donal O'Cahan, a son-in-law and vassal of O'Neill's, who betrayed him in 1602, on a promise by Sir Henry Docwra and Chichester that he should have a grant thereof, freed from O'Neill's dominion. O'Cahan's country is now known as Co. Derry. Chichester's share in the dispute between O'Neill and O'Cahan, as to the title of the fisheries, will afterwards be described.

By the Patent of the 2nd March, 1605-6, the Deputy granted the tidal-Bann "To John Wakeman, Esq., in consideration of a sum of money paid, by the King's command, to an old and well-deserving subject in Scotland," describing it as "the entire river of the Bann in Ulster, viz., from the

rock or salmon-leap to the high sea, which runs through, or on the confines of, the several counties of Antrim, Tyrone, and Coleraine—also the whole of the fishings, wears, soil and bottom within the banks of the said river, from said salmon-leap to the high sea; together with the salmon-leap and all the fishing thereof—with liberty of taking and carrying away the salmon, and all kinds of fish therein; of approaching the banks of said river and salmon-leap, on all sides, within the limits aforesaid; of using nets, and doing all other things necessary to said free fishing. All which premises are extended at the clear annual value of £10 Irish . . . notwithstanding the Act of 18th Henry VI." (requiring the finding of "office." E., 28, 189).

To evade the provisions of the Acts of Henry VI. the device of a "non obstante clause" was resorted to, viz.: there were inserted in the Patent the following words: "Notwithstanding the Statute made at Westminster in the 18th Henry VI., and confirmed afterwards in Ireland, that no Letter Patent be made to any person of any lands, etc., before Inquisition be found and returned into Chancery or Exchequer, finding the King's title thereunto." For this no Crown sanction was obtained.

For the purposes on which Chichester and Hamilton were bent, Thomas Irelande's letter was as available as Wakeman's to consummate the fraud, but the Deputy had evidently the design of involving the Earl of Devonshire, or using him as "cover" for his own misconduct.

The issue of this "Wakeman" Patent was a multiplied misdeed. It violated the Royal confidence by making use of a spent King's Letter; it filched from and diminished the Royal demesne, in case the Bann fishery were regarded as belonging to the Crown, while if the fishery were Hugh O'Neill's it robbed a private individual of his property. It also was a flagrant breach of public pact with the Earl of Tyrone as a national commander, made on his capitulation. Lastly, it contravened the Statutes of Henry VI., which required a finding of "office" before grant, to guard against injustice to either Crown or subject. Still this grant did not end Chichester's rapacity. Although the entire Bann, with Lough

Neagh, had now been completely appropriated, there were other domains to be despoiled.

The Deputy next turned to the Thomas Irelande Letter, and on the 13th March, 1605-6, a Patent of lands in Trim was issued to Hamilton on foot of it. Four days later (17th March, 1605-6) some Westmeath castles were granted him. Then the Irelande Letter was laid by, and within a month the Wakeman Letter was again resorted to. On the 11th April, 1606, John Wakeman received grants of: "All customs, subsidies, and imposts, by sea and land, of all merchandise and other customable things, imported or exported in the ports, havens, creeks, islands, rivers, etc., in Tuogh-Cinament, Derivolgie, Carnemoney, the Fall, Belfast, Magheramorne and Island Magee; and also in the town or wharf of Carrickfergus and in all the places within three miles surrounding said town; in the Lower Clandeboy and the Upper Clandeboye, in the Great and Little Ardes, the Duffrin, the Copland Islands, the whole River Lagan, the Bay of Carrickfergus, the Irish Sea nigh the Great and Little Ardes, the waters of Strangford and Loughcon, in Co. Down, and in the islands adjacent to Loughcon; as also the office of customer, comptroller, supervizor, searcher, gauger, and packer, within the premises; with the power of seizing and converting to his own use all things forfeited from time to time therein, with all billettes, cockettes, certificates, entries of ingate and outgate, of all merchandise aforesaid. . . . Also to have liberty to hold for ever a Fair on every 1st day of August, and the day following, at Belfast; and one other Fair on every first day of September and the day following, at the town of Antrim, with Courts of pie-powder and all tolls, customs, etc., to the Fairs belonging. . . . notwithstanding the Statutes of 18th Henry VI. (requiring "office" found) and the Statutes of 11th and 28th Elizabeth, concerning the imposts of Wines, etc." (E., 264).

A fifth grant was made to Wakeman on the 18th May, 1606, of: "The Castle of Ballymore-Loughsedie to said lands adjacent; whereof the town of Ballymore-Loughsedie is parcel, the Lough of Loughsedie, with all islands,

fishings, mills and weares with the premises, together with a Wednesday market and a Fair to be held there, from the 4th to the 6th of October, with all its profits, tolls, etc., ½ a caruc. in Killinboy, 1 caruc. in Ballimacall, 1 caruc. in Skeffin, 1 caruc. in Ballihesker, 1 caruc. in Balligolough, ½ a caruc. in Ballinicor, ½ a caruc. in Ballimorrin, ½ a caruc. in Moddidoe, ½ a caruc. in Ballipaden, ½ a caruc. in Ballinadrone, ½ a caruc. in Ballipersagh, 1 quarter or cartron of land in Clonemeagh, near Loughsedie ; 1 cartron in Kilcrawgh near Pierston, 1 cartron in Jordanstown, 1 cartron in Cloneviokgilleroe, a cartron in Clonemany, the castle and ½ a caruc. in Tobbercormack, in Co. Westmeath ; 1 caruc. in the town and fields of Pales, with a certain fishing and a wear upon the Enny ; 1 caruc. in Ballivicknamae, in Co. Longford, with all castles, towns, messuages, mills, loughs, houses, edifices, structures, shops, cells, cellars, granaries, stables, devecotes, orchards, gardens, lands, meadows, pastures, commons, demesne lands, wastes, briers, thorns, bogs, marshes, woods, underwoods, free warrens, waters, water-courses, fishings, islands, suits, stock, multures, lakes, rents, reversions ; also power to hold Courts leet, view of frank pledge, lawdays, warrens, estrays, etc. To hold to him, his heirs and assigns for ever, as of the Castle of Dublin, in free and common soccage, at the rent only of one red rose ; and this Patent to be valid notwithstanding the Statute of 18th Henry VI." (requiring " office found "), (E., 264-8).

All this was done by way of acting on a King's Letter conferring land to the value of £100 a year.

Hamilton's connection with the grants to Wakeman by Chichester has now to be established, and Chichester's connivance with Hamilton. The first link in the chain of evidence is that Wakeman, five months before Chichester issued any Patent in his favour, made over to an official of the Deputy the benefit of all grants he might receive. The Deputy's go-between then assigned them to Hamilton, and that worthy, a little later, reconveyed them to Chichester. Some minor pickings he kept for himself, but the Deputy was the principal beneficiary. Wakeman specified no price, nor knew what bounty he might be favoured with. A

"letter of attorney" signed by Wakeman on the 21st October, 1605, recites:

"King James having been pleased to grant a warrant for passing to John Wakeman, of Beckford in Co. Gloucester, esq., and his heirs, any manors, rectories, lands, tithes or hereditaments, within Ireland, of the yearly value of £100 Engl., and the said Wakeman having made Richard Cooke, knt., his attorney, who obtained a grant of divers manors, lands, etc., parcel of the value contained in said warrant. The aforesaid John Wakeman, by letter of attorney of 21st October, 1605, empowered James Ware, esq., to sue for and obtain the residue of the premises mentioned in said warrant, and afterwards to alien and dispose of the lands so granted" (E., 20).

The persons nominated by the two powers-of-attorney were men of quality and rank. Sir Richard Cooke—named in the first—was Chancellor of the Exchequer and principal Secretary of State in Ireland. Mr. James Ware, named as the person to whom the Patent was to be granted on Wakeman's behalf, was the Auditor-General of Ireland. He was afterwards knighted, and Chichester wrote in his favour to Treasurer Ridgeway, "hoping Mr. Auditor Ware may find favour in his reasonable demands" (S.P.I., 1610, p. 362). The Law Officer, Sir John Davies, had the duty of scrutinising and approving the issue of Patents. The Lord Chancellor's sanction to the affixing of the Great Seal was also necessary. He was newly appointed, and was Chichester's nominee. This, with the fatal illness of Devonshire, encouraged and facilitated the enterprise of the Deputy. Officialism was brigaded to assist spoliation.

The day after Wakeman received the Patent for the tidal Bann (2nd March, 1605-6), the Auditor-General conveyed it to Hamilton by the assignment following:

"James Ware, attorney of John Wakeman, esq., pursuant to the letter of attorney aforesaid, sold to James Hamilton, of Bangor in Co. Down, esq., for a certain sum of money, all that River of the Bann in Ulster; that is from the rock called the Salmon-leap in the same river unto the main sea; which river runneth into the several counties of Antrim,

Tyrone, and Coleraine, or on the confines of same, with all the fishing and the several fishings and wears, and the soil and land of said river from the said Salmon-leap to the main sea; also liberty of taking all kinds of fishes therein, to go unto the banks of said river upon every side within the limits aforesaid, to place nets, and do all other necessary things —all which were granted to said Wakeman by Patent," etc. (E., 281).

By these assignments, from Messrs. John Wakeman, of Gloucestershire, and Thomas Irelande, of London, who were total strangers to Ireland, another total stranger to Ireland was given (on paper) the largest lake and the richest river in the Three Kingdoms, as well as enormous territories in half a dozen counties. Hamilton thus became an estated gentleman (by Patent), and it only remained for him to share his gains with the confederate without whose aid he would have been powerless.

The bargain between the Deputy and himself as to the division of the spoil is witnessed by a Conveyance of the 10th April, 1606. This document conveyed from Hamilton to the Deputy the lion's share of the plunder, including Lough Neagh and the non-tidal Bann, with numerous parcels of lands set forth in the Wakeman-Irelande Patents. This can be seen by a comparison of the "parcels" in the printed Calendars (published by the Record Commissioners) showing the denominations and rents set out in Hamilton's grants, and those in Chichester's Patents. Much monastic land was retained by the "Scot" as his share of the booty, for he knew that the Royal title thereto was clear by Statute, without a finding of "office" under the Act for the Dissolution of the Monasteries (23 H. VIII., c. 5, s. 2, 24).

On the 14th May, 1606, Hamilton conveyed to Chichester half of the "moiety" of the tidal Bann. Both of them had overlooked the fact when making the grant to Wakeman that Montgomery, Bishop of Derry, claimed part, and the Bishop of Down and Connor another part of the tidal Bann, while Sir Randal MacDonnell in 1603 received a Patent for a "fourth." The result of this oversight will be treated of subsequently. Neither conveyance from the

"Scot" was enrolled in Chancery. This was not legally necessary, and an enrolment would have divulged the secret of the division of the spoil under the Wakeman and Irelande Letters, which the Deputy wished strictly guarded. Such non-enrolment contrasts significantly with the course adopted in the case of Hamilton's grant of the Coleraine Priory (with the annexed Bann fishing) to Thomas Phillips, which was duly enrolled. We can only ascertain the date of the Assignment to Chichester from Hamilton by a recital in a later Inquisition. No copy of the conveyance is known to exist; and, were it extant, presumably no reason would be found ascribed for its having been made, save that the gift was given for "divers good considerations."

In a letter of the 14th June, 1606, to Cecil, Chichester shows his entire change of heart towards his new ally: "Wishes that Mr. Hamilton, who twelve months ago was recommended thither by letters from his Majesty, for passing (amongst others) the lands of Upper Claneboy and the Great Ardes, were countenanced in his course to plant and settle there. He is the more to be favoured for his willingness to pleasure some English gentlemen and officers in passing their estates in other lands in Lower Claneboy, which he passed upon his Book[1] to his Majesty's advantage in raising a good rent elsewhere. . . . The business had been affected without grudge or offence to any of the Irish lords or gentlemen formerly pretending title to the same, by reason they had passed good quantities to themselves at easy rents, by virtue of his Majesty's Letters . . ." (S.P.I., 502).

In the same spirit Chichester later on reports to Cecil:

"In this County Antrim, by virtue of his Majesty's letters, which they received at Armagh, they propose to divide Lower or North Clandeboy. . . . For this end, they must make use of Mr. Hamilton's grants with his assent, for the better settlement of free holders in this part thereafter. They recommend some plantation of English and Scots at

[1] "Every composition, whether play, ballad, or history, was called a 'book' on the registers of ancient publications" (S.V.S., vol. ii. p. 337). "By this our books drawn" (King Henry IV., iii. 1)—i.e. "our articles."

Coleraine upon the Bann-side. This they intend to perform by permitting Mr. Hamilton to pass that Abbey, and lands appertaining to it, in his Book, and re-passing the same to Captain Thomas Phillips, a discreet and honest servitor there settled " (S.P.I., 321).

In the years 1608, 1609, and 1611, further Patents were issued to Hamilton on the exhausted King's Letters, some on that to Wakeman, and others on that to Thomas Irelande. During Chichester's ten years' tenure of office, the relations established between him and Hamilton were vigorously maintained, and the frauds against the Royal Signet were continuous and systematic. Hamilton's principal ambition, and the subject on which he required most countenance from the Deputy, was to secure the territory of Claneboy, of which he was to receive a third from Sir Con MacBrian O'Neill. Though the loot of " the Scot " through the Wakeman and Irelande Patents was less than the Deputy's (for whom he served as a conduit-pipe), he was richly rewarded otherwise.

Hamilton " was so wise, as to take, on easy terms, endless leases of much more of Con's third part, and from other despairing Irishes " (S. MS.). Having begun as a spy, then a yarn-exporter by Royal licence (despite Statute), he was created, first, King's Serjeant-at-Law, then a Knight, next a Privy Councillor, was " counted in " by Chichester as Member for Co. Down ; and finally made Lord Claneboy, with a huge rent-roll, and did not even then disdain a stipend of £13 6s. 8d. Irish, payable out of the customs of Dublin plus £10 a year as Constable of Trim Castle (C. MS., 611, 183 ; H. MS., 77).

It was an offence against the Sovereign for the Deputy to acquire property without Royal licence. Statutes, then in full vigour, spoke with severity against officers of the King busying themselves in law-suits in which they were interested; and forbade their taking conveyances of land. The Act, 3rd Edward I. sec. 25, declares : " No officer of the King by themselves nor by other, shall maintain pleas, suits, or matters, hanging in the King's Courts, for lands, tenements or other things, for to have part or profit thereof, by covenant

made between them ; and he that doth shall be punished at the King's pleasure."

The Act 17th Edward II., "For the amendment of the Government of Ireland," provides: "The Justices of Ireland, nor any other officer of ours of the same realm, so long as they are in our service there, shall not purchase any land or tenement within the list or bound of their bailiwicks, without our special licence ; and if any do the contrary, that which he shall purchase shall accrue and forfeit to us and our heirs."

The Act 31st Edward III. (Stat. 4, c. 1), "An ordinance made for the estate of the Land of Ireland," sets forth : "Whereas certain officers both great and small, notwithstanding the Statutes passed touching champerties, as well for gifts and bargains as mutual covenants among themselves and some of the parties pleading before them to have the lands in plea, when they should be recovered, have maintained and defended and aided one of the parties, so that commonly the land so in plea and recovered, through an error of justice . . . hath remained in the hands of some one of them, without his paying anything, or but little, for the same, and thus the parties be cheated out of their lands. . . . [Be it enacted that] none of our officers, great or small, do make or carry on such maintenance . . . nor do obtain lands so in plea."

Two of these Statutes were specially passed for Ireland ; and by Poynings' Act of 1495 (10th Henry VII. c. 22), all previous English Acts were applied to Ireland. That the law was no dead letter is proved by averments in Irish charters. Thus the calendar of Lord Gormanstown, p. 25 (about 1364), refers to an entry in his register :

"Sir Christopher de Preston, Knight, also has a record testifying that when Robert de Preston acquired the manor of Gormanstown he was not a Minister of the King, to wit, a judge.

"Also has a charter of licence to acquire, made to R. de Preston, notwithstanding his being a Minister of the King."

Chichester therefore knew the risk he ran in taking an

assignment from Hamilton, and this explains why he shrouded the transaction from challenge by non-enrolment.

Two years later, he hit upon the device of wresting to his private ends, a Commission from the King enabling Patents to be issued in certain cases of defective title, and used his nephew's name to cloak the abuse. This gave the appearance of Royal sanction to his acquisitions, while avoiding any disclosure to the King of the fact that his Deputy was robbing the Crown by means of spent and stale warrants. Meanwhile, an unlooked-for and historic event, the Flight of the Earls, aided the game he was playing, and threw all the cards into his hands. That story begins with the spring of 1607, when O'Neill's vassal, O'Cahan, chief of the country which now forms Co. Derry, petitioned the Irish Privy Council against the operation of the Patent received by the Earl of Tyrone, on his pardon in March, 1603.

Donal Ballagh O'Cahan was married to a daughter of O'Neill's; but, towards the close of the war against Elizabeth, he forsook the Earl (21st June, 1602) and joined the Queen's forces. O'Neill declared that, only for this defection, he could have held out indefinitely in the Derry fastnesses. Chichester described their strength years later in a letter to the Privy Council (28th February, 1609-10): "That country is so divided from the rest with such high mountains and waters on the west and east sides of it, and of so great fastness elsewhere within, and for rivers, woods, and bogs, as it was Tyrone's last and surest retreat in the latter end of his rebellion, when he was no longer able with small forces to subsist in all the rest of the province besides." As a reward, O'Cahan was promised by Docwra and Chichester the fee-simple of his country, which had hitherto been tributary to the O'Neills.

Articles of Agreement between Docwra and O'Cahan were drawn up on the 27th July, 1602, and those which concern this narrative are short and simple:

Article 5—

"The fishing of the Bann is wholly reserved to the Queen, and also the whole scope of land called a ballibo for

maintenance of the garrison at Coleraine, if the Queen please."

Article 6—

" The fishing of the whole river of Fahan shall also go with the land about Aynogh, which is reserved to the Queen's gift."

There was a 3rd Article—

" All the land between the Fahan and Lough Foyle . . . shall be wholly in her Majesty's gift." To this a note in the margin was affixed, viz. :

" Most of this land is in the hands of Nicholas Weston, upon some agreement with O'Cahan, notwithstanding it was by his own consent excepted. He [Weston] has likewise the fishing of the Fahan in the 6th Article, both in mortgage from O'Cahan, as he says " (S.P.I.A., 456).

Weston, like James Carroll, was one of Chichester's implements. He lived in High Street near Dublin Castle (I.I.,9), and his name was used by the Deputy for insertion in Inquisitions taken before himself, whereby Weston was certified (without any document being produced) to be the mortgagee of dead, exiled, or imprisoned Chiefs with a view, after their attainder, to clog the Crown title, to estates he coveted.

The promises made to O'Cahan could not be kept, as Lord Mountjoy, after consulting the Privy Council, refused to break the Treaty of Mellifont, which had restored O'Neill to his ancient possessions (March, 1602-3), telling Sir Henry Docwra (Governor of Lough Foyle) in May, 1603, that " O'Cahan must and shall be under my Lord Tyrone " (D.N.). This event deeply influenced Irish history.

In April, 1604, Sir John Davies wrote to Cecil attacking O'Neill's title, in order to accomplish indirectly what Mountjoy would not directly sanction. Davies " hoped an Act would be passed in the next session," giving " certain and durable estates to his tenants." Thus he anticipated Mr. Gladstone's legislation by nearly three centuries ; but Davies' recommendations were not renewed when the native landlords were got rid of. His argument was that, while O'Neill's clansmen remained tenants-at-will, they would have to follow their lord in war, " as in England in Warwick's and the

Barons' time. Whereas, at this day, tenancies at will being replaced by fixed estates, if any of these great lords of England should have a mind to stand upon their guard—well, they may have some of their household servants or retainers, or some few light-brained, factious gentlemen to follow them ; but as for their tenants, these fellows will not hazard the losing of their oxen, of their corn, and the undoing of themselves, their wives and their children, for the love of the best landlord that is in England " (S.P.I., 60).

Cecil's reply however encouraged no attack on O'Neill's Patent.

After Devonshire's death in April, 1606, O'Neill had no longer a protector at Court, and his enemies were stirred into activity. On the 17th June, 1606, O'Neill made the following protest to King James : " Had presumed by his letters, written in December last, to complain to his Majesty of the hard courses held against him, before the present Lord Deputy's time, by sundry persons that have pried so nicely into his late patent that, unless it please his Majesty to explain his royal meaning in expounding his patent, those courses would work the overthrow of his estate. For divers ' offices ' had been found and returned, without the privity of the Lord Deputy then governing, by jurors empanelled unawares of him [Tyrone] ; but having received no answers to his letters, and finding the new Lord Deputy very upright, he renews his most humble suit ; and, inasmuch as the chief ground of complaint of such as sought to take his living from him, rose upon colour of terming divers parcels of his inheritance to be monasteries, friaries, and abbey-land ; and as the Bishops of Clogher and Derry, where their predecessors had only chief-rent, would now have the land itself, he besought the King to stop any such mean courses, and force them to be contented with what their predecessors had formerly enjoyed, these many years past " (S.P.I., 503).

The character for uprightness, which O'Neill gave Chichester, was diplomatic, as he knew his letter would be referred back to the Deputy. He soon realised that, with Devonshire out of the way, Chichester was inexorably determined to break him.

On the 11th November, 1606, Davies reported to Cecil that he had entirely misconceived the chief's rights, and that it was " universal and infallibly true " that the supposed tenants-at-will were really " freeholders." " Not many days before, the Earl of Tyrone, in a violent manner, took great distress of cattle from O'Cahan, and pretended to be lord of all that country. . . . I mention this to you, not in respect of the riot, but to make an overture to you of good advantage, which I confess I understood not, before I made my last journey into Ulster. I thought without question, and so it was generally conceived by us all, that the Earl of Tyrone had been entirely seized in possession and demesne of all the country of Tyrone—being in length sixty miles and in breadth nearly thirty—and that no man had one foot of freehold in that country but himself, except the bishops and the farmers of the abbey lands. . . . Now, on our last Northern journey, we made so exact an inquiry of the estates and possessions of the Irishry, that it appeared unto the Chief Justice and myself that the chief lords of every country have a seignory consisting of certain rents and duties, and had withal some special demesne; and that the tenants or inferior inhabitants were not tenants-at-will, as the lords pretended, but freeholders, and had as good and large an estate in their tenancies as the lords in their seignories. . . . This we found to be universal and infallibly true in all the Irish Countries in which we held assizes this last summer, namely in the countries of Mac-Mahon, Maguire, and O'Reilly in Ulster [now Monaghan, Fermanagh, and Cavan] and in the countries of Birnes and Cavanagh in Leinster [Wicklow and Wexford]. The suggestion is that these inferior freeholds were vested in the Crown by the Act of Attainder of Shane O'Neill (11th Elizabeth), and not regranted in the Queen's subsequent patent to the Earl; and that I should be directed to prefer informations of intrusion against the occupiers of these lands with a view to a Plantation " (S.P.I., 19).

This was part of a carefully thought-out plan, and events were rapidly approaching a culmination. After the Ulster lords were driven into exile, Davies re-discovered (1610) that

the supposed "freeholders" were merely "tenants-at-will," and cleared them off their farms, although a Royal proclamation had meanwhile been issued guaranteeing them protection. What was "universal and infallibly true" in 1606 became treasonable heresy four years later. Thus the Attorney-General reported on 24th September, 1610, when the Plantation came to be enforced, that they :

"Began at Cavan. . . . The inhabitants called themselves freeholders, and pretended that they had estates of inheritance in their lands, which the chief Lords could not forfeit by their attainder. Whereas in truth they never had any estates according to the rules of the Common Law, but only a scambling and transitory possession as all other Irish natives within the Kingdom. When the proclamation was published touching their removal (which was done in the public Sessions House, the Lord Deputy and the Commissioners being present) a lawyer of the Pale retained by the inhabitants endeavored to maintain that they had estates of inheritance, and in their name desired two things—First that they might be admitted to traverse the 'offices' that had been found of those Lords. Second that they might have the benefit of a Proclamation made about 5 years since, whereby their persons, lands and goods were received into His Majesty's protection. To this, by the Lord Deputy's commandment, I made answer that it was manifest that they had no estate of inheritance. . . . These reasons answered both their petitions, for if they had no estate in law, they could show no title, and without showing title, no man may be admitted to traverse an 'office.' . . . Wherewith they seemed not unsatisfied in reason, though in passion they remained illcontented—being grieved to leave their possessions to strangers, which their Septs had so long, after the Irish manner, enjoyed" (S.P.I. 498).

Thus the original plan of the Attorney-General was to destroy the revenues and power of the owners by declaring their tenants "freeholders," and then confiscating the "freeholds." Afterwards, when the Lords were forced into exile and attainted, the "freeholders" were held to be

tenants-at-will and huntable as such. It took a little time to devise a process by which the owners could be driven overseas. Though necessarily slow, it was methodical and certain. A trial by the Star Chamber in Dublin Castle, involving the title to the fisheries of the Bann, decided the fate of Ulster for the next 300 years.

This was commenced in 1607 by Donal O'Cahan, the vassal and brother-in-law of Hugh O'Neill. He denied that O'Neill was his overlord, or that he was liable to pay him rent. By hereditary usage the head of the O'Cahan clan inaugurated "the O'Neill," when a new chieftain of Tyrone was proclaimed at the Royal stone of Tullahoge, and always yielded the O'Neill a yearly tribute. Knowing Chichester's hatred of the Earl of Tyrone, O'Cahan disputed his Patent in order to become rent-free as an independent owner. O'Neill then seized on the Bann fishery to enforce his rights. The Deputy set down the dispute between vassal and Chief for trial before himself, in the Castle Chamber.

The consequences O'Cahan could not foresee. Still less did he imagine that the Deputy, to whom he appealed, had shortly before taken a secret Conveyance of the fishery to which both he and O'Neill were asserting title. For one suitor the case ended in banishment, for the other in imprisonment for life. Both committed "treason" in pretending ownership to property which the Deputy wanted for himself. What had been generously bestowed by the King of Scots on Hamilton's hotel-keeper in Bow Lane, had now become by inscriptions on sheepskin, the Lord Deputy's.

CHAPTER XI.

THE LAWSUIT OF THE CHIEFS.

In May, 1607, a new Royal favourite appeared in Ulster in the person of the Right Rev. George Montgomery, a Scotchman, who had been Dean of Norwich under Elizabeth, and in her reign used to transmit English intelligence to the King of Scots. For this he was promoted Court Chaplain on the accession of James I. to the united thrones. It was by his influence at Court in 1604 that his brother, Hugh Montgomery, received the King's sanction to the partition of Sir Con MacBrian O'Neill's estate, in return for Con's pardon, plus a grant of a third of his lands to Montgomery and a third to James Hamilton. The King made Hugh a Knight, and appointed George to the triple Bishopric of Derry, Clogher, and Raphoe, and he ultimately became Bishop of Meath.

Though created Bishop of Derry in 1604, George Montgomery did not visit his See until 1607, and then came only when Sir John Davies complained of his absence. The episcopal absentee, meanwhile, obtained a King's Letter on the 2nd May, 1606, to ascertain the ecclesiastical lands of his dioceses, and was very active in ferreting out the profit of estates which had rendered donations to the ancient Church. Catholic chiefs were not eager to second his searching processes, and soon after his arrival in Derry in 1607 Montgomery wrote to Cecil and to Chichester, pointing out how important it would be to Protestant interests there, if O'Cahan were relieved from O'Neill's overlordship. The Bishop naturally wished to have a less powerful antagonist than O'Neill to contend against, in his quest for Church lands. O'Cahan,

on his part, had not forgotten the broken promises of Docwra and Chichester, on his surrender in 1602 ; and, even before Montgomery arrived in Ireland, refused to pay rent to O'Neill. To enforce payment O'Neill, in November, 1606, seized O'Cahan's cattle and the fishery of the Bann. O'Cahan then appealed to the State for redress (S.P.I., 65).

By that time Chichester had taken a conveyance of the Bann and Lough Neagh from Hamilton on the 6th April, 1606 ; and of half the " moiety " of the tidal fishing on 11th May, 1606. Of course, if either O'Neill or O'Cahan owned the river or the lands adjoining, the grants which Hamilton received and had assigned to Chichester were worthless. Yet, though holding a conveyance of the fisheries, the Deputy determined to sit in Council and hear as presiding judge the dispute between two Chieftains concerning property which he claimed to be his own.

Bishop Montgomery supported O'Cahan at the Privy Council, before which O'Neill was summoned in April, 1607. The first hearing was inconclusive ; and, on the 2nd May, 1607, O'Cahan filed a formal petition against O'Neill. Thereupon the Deputy assigned the Attorney-General and Solicitor-General as O'Cahan's counsel, and ordered the Earl to lodge his answer forthwith.

The Irish Privy Council then exercised, under a Royal Commission, in what was styled the " Castle Chamber," the jurisdiction asserted in England in the Star Chamber. Amongst other functions, it claimed to construe patents and decide on the rights of litigants to real estate. The scope of its powers may be seen from copies of Commissions in Erck's and Morrin's Calendars.

O'Cahan's petition set forth that :

" He and his ancestors, for the space of three thousand years and upwards, have been possessed of a country called O'Cahan's country, lying betwixt the rivers of the Bann and Loughfoile, within the Province of Ulster, without paying of rent, or other acknowledgment thereof to O'Neale, saving that his ancestors were wont to aid O'Neale twice a year, if he had need, with risings of 100 horse and 300 foot, of which O'Cahan had of him yearly, upon such service, O'Neale's

whole suit of apparel and horse that he rode upon, and 100 cows in winter. . . .

"The Earl of Tyrone, from his return out of England from his Majesty, had by Patent given unto him all your said suppliant's country, and made him vassal to him and to his heirs for ever, and imposed presently upon your said suppliant 160 cows towards his charges, with the yearly rent afterwards of £200, which cows were then afterwards levied out of your said suppliant's country, and for the yearly payment of the said rent he hath taken into his hands that part of your suppliant's country called Macharie, lying between the mountains and the river of the Ban, being one great third part of the whole country, with the fishing of the river of the Ban, which he desired then only for a time, threatening withal to reject your honors' said petitioner out of his country, and to dispose of same to others, unless he would condescend to his demands. . . .

"The said Earl, over and besides all these former unlawful and unconscionable impositions and exactions, intendeth still to keep unto himself, from your honors' said petitioner, the fishing of the said Ban; preyeth yearly upon other parts of his country, draweth away from him his best and most able tenants by taking away their cows, and after restoring them upon promise they shall relinquish your honors' suppliant and become tenants to himself; suffereth him to be exposed to cess, answering at Court, and to be subject to many wrongs; and your honors' suppliant understandeth also that the said Earl had no such grant at all from his Majesty of the said country, as he affirmed" (Mn., 54).

On the 23rd May, 1607, O'Neill filed his reply. He averred that his grandfather, Con O'Neill, was seized in fee of the lands in O'Cahan's Bill mentioned, before his surrender to Henry VIII.; that Henry VIII. re-granted them by Letters Patent to Con; that Queen Elizabeth re-granted them by Letters Patent to himself; and that King James had confirmed the grant by further Letters Patent.

This plea was unanswerable; but Chichester was the Judge, and held conveyances of the Bann. The river bounded the territory in dispute on the East, and, therefore,

was either O'Neill's or O'Cahan's, " to the middle thread." The Attorney-General drew up a " case " for the information of Chichester and his Privy Council, as a preliminary act of justice, he being O'Cahan's counsel. This case set forth the title in this wise :

"A grant by Letters Patent (1st May, 29th Elizabeth) was made to Hugh, Earl of Tyrone. Afterwards, viz., 29th Elizabeth, a Commission under the Great Seal of Ireland was directed to Sir Robert Gardner, Sir Robert Dillon, Sir Lucas Dillon, Sir Nicholas Shane, then Master of the Rolls, and others to inquire, by jury and other ways, unto the bounds of such lands as the late Queen Elizabeth had granted to the now Earl within the country of Tyrone. Inquisition taken before said Commissioners and jury of the province of Ulster, whereby it was found that the boundaries of the country towards the North began at the river Finn, and proceeded then as far as Lough Foyle, by the sea shore, to the Bann, and then extend towards the east to Lough Neagh. This inquisition was returned into Chancery, and, at the suit of the Earl of Tyrone, enrolled in the Exchequer, where it remains on record.

" Since which time [here are recited the rebellion and pardon of Tyrone and O'Cahan], the Earl, being received to grace, has obtained other Letters Patent from his Majesty, with the same words and limitations of estate (but that some territories are excepted out of his last grant) as were contained in the Letters Patent of Elizabeth.

" Upon all this matter the question is, whether the freehold of O'Cahan's country do not yet remain in the Crown, by virtue of the statute 11th Elizabeth, ch. 1, or whether the said country be granted unto the now Earl by any of the grants before recited " (S.P.I., 1607, 201).

Thus did O'Cahan's counsel, the Attorney-General, submit to the tribunal presided over by the Deputy, that the question for decision was not whether his client had any rights, having regard to the undertakings he received from Chichester and Docwra ; but whether the disputed lands did not belong altogether to the Crown, on the ground that O'Neill's Patent was worthless. This, naturally, was what would have been

convenient for the Deputy to decide, as it was the only conclusion which would support the Patents of the Bann and Lough Neagh to Hamilton (through Wakeman and Irelande), and the conveyances from Hamilton to himself.

At the preliminary hearing the Attorney-General argued that O'Cahan's country was not granted to O'Neill, because it was not specially named in his patent. To this O'Neill replied that no " parcel " (or district) was specially named therein, and that the boundaries were found by juries, on inquisition, both in his own case and that of his grandfather, Con O'Neill, the first Earl of Tyrone.

Between the two hearings the Earl went to Mellifont (26th May, 1607) to consult his old friend, Sir Garrett Moore. There he wrote to King James, praying a new Patent with the " parcels " of his estate " recited by special name . . . notwithstanding any ' office ' taken without my privity, upon advantages, by the working of my adversaries." At that period new Patents were constantly granted under the Commission for Defective Titles, and the request was not an extravagant one. O'Neill then returned to Dublin, to await the second argument in the Castle Chamber.

The result of the adjourned hearing was regarded by O'Neill as disastrous. The order of Chichester in the Privy Council is without date, but was probably made 20th June, 1607. The curial part runs :

" The matter being heard and debated before the Council-table, that there was an agreement formerly made betwixt the said Earl and O'Cahan, which was written in Irish, which writings remain in the hands of Sir William Ussher, Clerk to the Council, to the effect that O'Cahan should possess two parts of the said country, and the said Earl the other third part named Maughery, and that this agreement was afterwards dissolved by both their consents, as the Earl affirmed, but is denied by O'Cahan. Now as the matter is of great weight, and in order that the country may remain in good quiet, and especially because, upon examination of the whole matter, it seemed to them that the right to that country still remaineth in his Majesty, they order and decree, for the present, that the said O'Cahan shall hold the said two parts of

the said country, and that the Earl shall also hold the other third part called Maughery, free on both parts the one towards the other, from any charge growing hereafter, saving to every man his right, until his Majesty's pleasure be further signified in that behalf.

"Attested,

"WILLIAM USSHER" (S.P.I., 203).

Thus Chichester decreed, in the teeth of a Patent based on a National Treaty made only four years before, that O'Neill's country and fisheries belonged to the Crown. He, however, very oddly overlooked the fact that this ruling amounted to a judgment adverse to the Hamilton Patents of 1605, and their subsequent assignment to himself. O'Cahan and O'Neill each asserted that the Bann was his. "No," said Chichester, "it is the King's." If so, it was therefore a decision that Hamilton assignments had not conveyed the river to himself.

Casuists may defend the judgment on the ground that the Privy Council could only pronounce on such materials as were before them, and that the Wakeman-Irelande-Hamilton Patents were not produced. Still, the Lord Deputy, who presided, had them in his possession, and Davies knew of their existence. Had they represented genuine transfers of the Bann, both O'Neill and O'Cahan were "out of Court." If the river were Chichester's, knowledge of the fact should have been brought home to everyone—especially to O'Neill. No good object could exist for secrecy in respect of the ownership and transfer of the most important waters in the three Kingdoms. If the Deputy claimed them, why did he not produce his title to the litigants, and say: "I am the owner of the fishery you are wrangling over"?

Both Chichester and Davies informed King James of the litigation, but, in so doing, neither of them vouchsafed the information that the Deputy claimed the Bann and Lough Neagh as his own property. Each correspondent was copious concerning a trifling incident of the trial—that O'Neill rent O'Cahan's Gaelic deed; but neither the Attorney-General nor the Deputy, who asserted that the

disputed country and its waters were the King's, informed his Majesty of how its most precious jewel, the River Bann (not to speak of Lough Neagh), had been secretly annexed by his Viceroy under a Patent issued to a nephew.

Davies' letter to Cecil (1st July, 1607) says: "Plainly neither of them had any title . . . but it is now, and ever hath been, vested in the actual possession of the Crown, since the 11th Elizabeth. Howbeit, the land lying in those remote parts, the ignorance and negligence of officers was such, that it was never brought into charge. He doubts not that his Lordship hath heard of this Earl's insolent behaviour, in snatching and rending in pieces an instrument written in Irish out of O'Cahan's hands, in the presence of the Lord Deputy and Council; for which afterwards he humbly submitted himself, as well by word as writing under his hand" (S.P.I., 1607, 210).

Chichester's letter (27th May, 1607) was more cautious: "Tyrone being lately come hither upon the complaint of O'Cahan, hath carried himself very untemperately in private speeches, and unrespectively by action at the Council-table, snatching a paper out of O'Cahan's hands, and rending it in his presence. I suffered this to pass with a slight reproof, merely to make him understand he did amiss" (S.P.I., 1607, 152).

Chichester and Davies evidently concerted their letters with one another, to produce the same impression in London. Not a word in either informs the King that the matters in dispute were Patents from his Majesty—grants not furtively issued by Dublin officials to themselves, but made as acts of State to Irish nobles to end a protracted war. The incident of O'Neill snatching the paper from O'Cahan and tearing it, is represented as a matter of high consequence. It had occurred, not at the second hearing, but at the first. Nor were the contents of the paper hinted at. For the Gaelic deed snatched from O'Cahan entirely supported O'Neill's title. It is dated 17th February, 1606 (S.P.I., 1607, 110), and provided that O'Cahan was to pay a rent of 200 cows (or £200 a year, equal to more than £2,000 now) to O'Neill, and that the lands from the mountain to the Bann

should be in the Earl's possession and custody, as an assurance for his rent. Yet the "Dublin correspondents" of James I., without giving any account of this Deed (of which they had a translation before them), permit it to be inferred that O'Neill sought to destroy a record adverse to himself. The merits of the suit were entirely withheld from the King.

An official historian concedes that: "Chichester had one disqualification, which is a fatal objection to every one of his pretensions: he was interested as one of the Planters himself" (L.M., 47).

After this judgment as to O'Neill's Patent, on which his estate and income depended, whither could the Earl turn? One trusty councillor, Sir Garrett Moore (ancestor of Lord Drogheda) remained. He had been O'Neill's friend through life, and knew him as a youth at Elizabeth's Court. Moore was a fosterer of O'Neill's son, John, and had made the arrangements for the Earl's marriage with Mabel Bagnal, when O'Neill eloped with the Marshal's sister. Moore incurred censure from "the State" by providing a Protestant Bishop (Jones, Bishop of Meath, afterwards Archbishop of Dublin) to celebrate the nuptials. To Sir Garrett "the State" had recourse when the news reached Dublin Castle in March, 1602-3, that Elizabeth was in her agony: and it was to Moore's house at Mellifont, O'Neill sped to frame his peace.

Chichester had ordered the Earl to London, nominally to hear the King's decision on his Patent, but in reality with the hope of burying him in the Tower. On the 8th June, 1607, the Deputy wrote to Cecil:

"It may seem strange that he mentions the charge of a journey and want of money, holding such a place and having so great entertainment, but he assures him withal that the whole hardly maintains the house, and gives means for some other necessary expenses, which the honour of the place requires.

". . . The Earl of Tyrone is yet here, and has made very humble submission by word and writing before the Council-table, for his misdemeanor in snatching the paper from O'Cahan and rending it before the Board" (S.P.I., 192).

A couple of months later O'Neill resolved to go to Mellifont again to consult his old friend. Two days before doing so, he met the Deputy at Slane (8th September, 1607), where he solemnly bade farewell to that unjust judge. For while he parleyed with Chichester there came a message from the exiled Maguire, who had chartered a French ship at Dunkirk, to offer O'Neill transport beyond the seas. Maguire urged that retreat to France was wholesomer business for an Irish Chieftain than suitoring in London, with the Tower in the offing. The Earl was to have taken his journey to London in November, to argue patent-law there, but felt that as the King had left his letter of the previous May unanswered this boded ominously.

On the 10th September, 1607, O'Neill reached Mellifont. He realised that, if his patent was defective as to O'Cahan's country, it could be held infirm as to everything it conveyed. He knew, too, that the command to repair to London was the prelude to his consignment to the Tower, for he now realised that Chichester and Davies plotted his ruin, and would never relent.

Sad was the interview with Sir Garrett Moore ; sad the parting. Moore himself lay under suspicion. O'Neill spent two days with him pondering his prospects of redress, and ended his visit with a touching farewell to Sir Garrett and all the members of his household. Then he rode homewards to Tyrone, to join his wife ; and, having made hasty preparations for a voyage, sailed from Ireland for ever on the 14th September, 1607, with his old companions-in-arms.

So ended for the great Earl of Tyrone, the lawsuit of his vassal. A crueller fate awaited O'Cahan. Five months later, on paying a visit to the Deputy in Dublin Castle, he was thrust into a cell and only quitted it to end his days in the Tower. He was not even brought to trial (S.P.I., 179) and the estate alleged to be O'Cahan's (as against O'Neill), was seized without more ado by the Crown. Thus Chichester's furtive conveyance of the Bann spelt ruin for each of the Chiefs who could have challenged his parchment.

CHAPTER XII.

THE FLIGHT OF THE EARLS.

O'Neill embarked for France at Rathmullen, Co. Donegal, with Rory O'Donnell, Earl of Tyrconnell, Connor Maguire and their families. They returned no more. The *Four Masters* describe their departure in tones which, even in translation, awaken a mournful cadence in the Irish heart: "It was on the Festival of the Holy Cross in harvest, 14th of September, they embarked in the ship. That was a distinguished company for one ship. For it is most certain that the sea has not borne nor the wind wafted from Ireland, in the latter times, a party in any one ship more eminent, illustrious, and noble than they were, in point of genealogy, or more distinguished for great deeds, renown, feats of arms, and valorous achievements; and would that God had granted them to remain in their patrimonies, until their youths should arrive at the age of manhood! Woe to the heart that meditated, woe to the mind that planned, woe to the council that decided on the project of their setting out on that voyage, without knowing whether they should ever return to their native principalities or patrimonies till the end of the world!"

The ship which bore away the Earls had hardly cleared Lough Swilly when Davies sped to Ulster to lay indictments for high treason against them before Grand Juries at Lifford and Strabane. "True Bills" were then returned into the King's Bench; and proclamations of outlawry and treason issued. "Treason" there was none. One allegation was that, contrary to the 11th Elizabeth, the Earl of Tyrone signed his name "O'Neill." The only proof of this was an

order written in Irish to his servant : " O'Neill bids O'Quinn to pay £60," but this was signed " Tyrone." Davies confessed he was " obliged to use a little rhetoric " to get true bills found, although the Grand Jurors empanelled were chiefly the personal enemies of the Earls (Mn.).

When the fugitives were attainted, James I. wrote (20th November, 1607) expressing his pleasure that chiefs like Sir Cahir O'Doherty, of Innishowen, who was foreman of the Lifford Grand Jury, and Sir Henry Oge O'Neill, who was impanelled at Strabane, had found the indictments (D.C.H., 513).

Six months later O'Doherty himself was driven into revolt by the insults of the Governor of Derry, and killed. O'Doherty was a mere stripling when his hot-headed outbreak was provoked.

In the previous February Chichester arrested O'Cahan, on the pretext that he had abetted rebellion. On this the King (20th November, 1607) wrote to Chichester : " For O'Cahan, whom it seemeth you have imprisoned, we like well of the course you have taken with him, especially considering the corner he dwelleth in ; and we like also very well of your purpose for placing his son in college " (D.C.H., 513). The naked purpose of Chichester was to root out the Celtic owners in order to possess himself of their lands, on the pretence that high State policy was advanced by self-interested acts of spoliation.

O'Cahan's reward for deserting O'Neill in war, and attacking his Patent after he made peace, was a dungeon in the Tower of London. There he lay until his death, twenty years afterwards.

The decision in " O'Cahan *v.* O'Neill " which determined the Flight of the Earls is one of the largest facts in Anglo-Irish history. Their exile led to the Plantation of Ulster in 1608-13, with the Londoners' settlement in Co. Derry. To legalize the confiscations, the Irish Parliament was packed by means of hamlet-corporations, and remained a tainted body until its corrupt extinction. The Plantation provoked the Rebellion of 1641, under Sir Phelim and Owen Roe O'Neill, which ended in the Cromwellian confiscations and

reprisals of 1649-59. These dispossessions, in their sequence, induced the Irish gentry in 1688 to take up arms for James II. against King William, in the hope of regaining their estates. The Jacobite war ended with the Treaty of Limerick in 1691, and the breach of that Capitulation led to the enlistment of the Wild Geese for France, the Penal Laws, and the century of religious bitterness which ended in the Union of 1800. The fruits of the Union need no enumeration.

The officials of 1607 saw nothing in the flight of the O'Neills, O'Donnells and Maguires, save cause for rejoicing. They assured James I. (as their successors, two hundred years later assured Queen Victoria during the famine emigration) that the Kingdom was well rid of pestilent knaves.

In December, 1607, O'Neill in exile addressed to King James a Declaration of Grievances, which protests: "He could receive no answer of any former complaints which he preferred to his Majesty." As to his Patent, he said: "In fine, he could not perceive how he might assure himself of anything by the Letters Patent he had from his Majesty. Thereupon, understanding that his Highness granted a Commission for receiving surrenders, together with authority to amend all faults and intricate defects in any former Patents, he exhibited petition to the Lord Deputy, and the rest joined with him for the purpose, humbly proffering a surrender of his old Patent, and craving a new, with amendment of all defects in the former; whereof, although the same was a general favour granted by his Majesty to all his subjects of the whole realm, the Earl could have no answer."

Other portions of the Remonstrance deal with the consequences of the Wakeman and Irelande knaveries.

"The Lord Lieutenant did take from him all the fishings of the Ban, in like manner enjoyed and possessed by the Earl and his ancestors, which the Earl, to avoid the trouble of the law, was forced to purchase again, as though he had never before any title thereunto. . . . There hath been also certain other parcels of the Earl's land taken from him, by false 'offices,' taken without the Earl's privity, under colour of 'Church lands' a thing never in any man's memory heard of before; and the same lands passed to Sir George Carey,

Knight, the Queen's Majesty's Vice Chamberlain, and by him again to Sir Henry Docra, Knight, and by the said Sir Henry Docra to Sir John Sidney, Knight, and to one Captain Henry Vaughan ; together with certain other parcels of the Earl's lands, and his fishing of Lough Foyle, in like manner compassed by him, which also the Earl was forced to purchase it in the new, rather than be at continual suits of law, where he saw he could have no indifferency of justice."

O'Neill's resentment against Sir John Davies breaks out : " Your Majesty's Attorney-General, a man more fit to be a stage-player than a counsel to your Highness, who gave the Earl very irreverent speech before the Council table, which, being by the Council permitted, the Earl said he would appeal unto your Majesty ; whereunto he replied that he was right glad thereof, and that he thereby expected to achieve to honour " (S.P.I., 374).

Davies, indeed, soon after " achieved to honour." He was knighted on the 14th February, 1607, a couple of months after O'Neill and O'Donnell were declared outlaws at his instance.

Davies had published a poem on the " Art of Dancing," and this with his corpulent graces may account for the sarcasms of O'Neill as to his being " more fit to be a stage-player than a counsel." He was a poet as well as a pleader ; and his verses to Elizabeth and James helped his earlier promotion.

By the end of 1608 every Irish proprietor was swept out of Ulster. " Their extinction," writes Froude, " was contemplated with as much indifference as the destruction of the Red Indians of North America by the politicians of Washington, and their titles to their lands as not more deserving of respect. . . . To the English they were vermin, to be cleared from off the earth by any means that offered " (H.E.F., v. x. pp. 232-3).

On the 20th June, 1608, Cecil wrote to Chichester : " Now that all Ulster, or the most part, has fallen into his Majesty's power, he intends to order it so as it may redound to his honour and profit. . . . The Deputy is to abstain from making promise of any of the escheated lands, and to assure himself that not an acre will be disposed of till the survey

and the certificate of the lands be returned over to them." This seems to embody a hidden reproof to Chichester. His reply of 14th October, 1608, having stated that the Attorney-General and the Lord Chief Justice were despatched to London to confer with the King says :

" . . . Touching the state of the province of Ulster . . . this great territory is with great felicity escheated to his Majesty, who is now sole proprietor of it for the most part, as the native lords thereof were formerly accounted and known to be. Now it rests wholly in his Majesty's wisdom and judgment to retain and keep the same, by a firm establishment thereof in his Crown forever. . . . I do wish that the escheated lands there should not be granted away in gross, nor by whole countries, to one man, but rather that the division may be amongst many and by reasonable portions. . . ." (S.P.I., 68).

His zeal for the King's service further appears by a letter of the 7th December, 1608 :

" The sooner the King disposeth of those escheated lands, the more will it be for his profit. . . . Once waste, I fear the Undertakers' purses will not reach to stock and manure it, which we may gather from the plantation of Munster, which is a better country and nearer the sun, and yet the King's rent is hardly made by the Undertakers, as most of them allege " (S.P.I., 114).

The mask was thrown off in a letter of 10th March, 1608-9. Chichester had been pressing through Sir John Davies and Annesley that O'Doherty's estates in Innishowen should be given to himself. With a touch of querulousness he writes to the Privy Council :

" It is true that by some former letters I generally advised and wished that these escheated lands in Ulster might be divided and passed to as many particular persons, and into as many small parcels, to be held in free estates, as might conveniently suffice every man, the which I find to have been in some sort observed in this project ; but yet I pray your lordships to understand that I mean it not to be in this arithmetical proportion or popular equality, which is here laid down, but rather to have held much more of that other

proportion of distributive justice, which was anciently held in partition of common treasure and conquered lands, and which was always in respect of every man's particular well-doing, merits, quality, as duly appertaining to every one in terms of right" (S.P.I., 157).

Sir John Davies at this time was touting for him in London, and when the Deputy learned that his protest resulted in a grant of O'Doherty's territory, he appealed to Davies (31st March, 1609) to better the bargain. "If he hath Innishowen (as by some letters he is put in hope of it), he prays him to befriend him what he may, in the conditions" (S.P.I., 179).

That the Attorney-General did befriend him is proved by the fact that the Crown rent payable by Chichester for the entire Barony of Innishowen was only £36 14s. 11d. Then having been presented by the King with O'Doherty's vast property, the Deputy, by another discreditable juggle, made his plans to show that he had also acquired the Lough Foyle fishery adjacent thereto. That tideway and river had been held in part by O'Donnell and partly by O'Neill and O'Cahan. Having banished or imprisoned all three, Chichester tried to lay hands on their fisheries in a similar fashion to that by which he sought to appropriate the Bann and Lough Neagh.

This department of his industry need barely be touched on, but the Deputy's grasp will be better appreciated if the facts are marshalled, and they will be briefly noticed afterwards in order of date.

CHAPTER XIII.

TEMPTING THE LONDONERS.

After the flight of the Earls, James I. opened up negotiations with the Corporation of London for the plantation of Ulster. His advisers discerned that previous plantations failed because of want of capital in individual planters, who chiefly regarded their own profit irrespective of State necessities. The King sought to yoke the idea of an Ulster plantation, with the interests of the most powerful Corporation in the world, which could afford to act without regard to immediate gain. Negotiations were slow ; and deputations came from London to Ulster to view and report on the proposed acquisitions. The project was beset with difficulties, and might have broken down at any moment. Throughout the negotiations the grant of the Bann was the most important bait for the Corporation, but during the preliminaries Chichester never asserted (and, on the contrary, concealed) the fact that he claimed any portion of the river or of Lough Neagh. He also saw to it that, during the fateful negotiations between the King and the City of London, the Irish Parliament was not convened to validate the transaction. James I. promised the Corporation a Parliamentary title, but Chichester took care that it was never granted.

The Attorney-General treated the findings of the Grand Juries, and the proclamations of outlawry, as vesting in the King the estates of the dead or missing chiefs. The Statute of Treasons of Henry VIII. in England vested the lands of traitors in the Crown, by the mere fact of treason ; but that Act did not apply to Ireland. The Irish Act, 28th Henry VIII. c. 1 (passed after Earl Kildare's Rebellion) was

confined (Section 6) to treasons committed within three years after 1537. Sir John Davies affected to consider that his " outlawry " of O'Neill and O'Donnell, and the death of O'Doherty in rebellion, were equivalent to a conviction and a legal attainder in blood. Until 1613-15 no statute legalising the confiscation of the estates of the Ulster lords was passed, but the Plantation had then taken place, and new landlords were inducted. Possession has, of course, long since supplied the original lack of title ; but, in the case of Lough Neagh, no possession (or " prehension ") of that vast sheet of water was effected or took place, nor was the Lough within the estate of any of the attainted chiefs. The natives then and since fished it, as of yore, heedless of parchments.

Chichester received his first instructions to frame a scheme for the Plantation in 1608. An old writer gives the skeleton " Project for the Division and Plantation of Ulster," stating : " It is manifest it was drawn up by the Privy Council of Ireland to be laid before the King and Council of England, as a guide for the Plantation " (H.H., 111-121). Its date was January 23rd, 1608-9 (I.S.P., 397).

Under the head of " Co. Coleraine " (now Londonderry), the draft " Project " informs the King : " There are in this county divers fishings, touching the disposal of which his Majesty's pleasure is to be known." Precise particularity is affected by the Deputy, and claims adverse to the Crown title are pretended to be carefully set out. The claims against the Bann are formally enumerated in this wise, viz. " The moiety of the fishing of the Ban, unto which moiety, as likewise unto the other moiety, the assignees of Sir William Godolphin make claim, by a lease of 21 years, made the 42nd of Elizabeth, which lease hath been in question, and allowed by the State in Ireland ; and the assignees of John Wakeman do claim the fee-simple thereof by Letters Patent dated the 3rd Jacobi.

" And the Lord Bishop of Derry claimeth one day's fishing, viz., the second Monday after Midsummer Day, in the River Ban and likewise the fishing of the Wear of Ballinasse, which notwithstanding was granted by Letters Patent to Thomas

Irelande, and by him assigned to Thomas Phillips, who is now in possession thereof."

In all this, truth was lacking. Lough Neagh and the non-tidal Bann had been conveyed to Chichester by Hamilton. So had half the "moiety" of the tidal Bann. These facts were suppressed. The "Wear at Ballinasse" was not granted by Letters Patent to Thomas Irelande, nor assigned by him to Phillips. Thomas Irelande never had it; nor had he the one-day Bann fishing; and, therefore, he never conveyed either to Thomas Phillips. James Hamilton, on the 20th July, 1605, as Thomas Irelande's assignee, got Coleraine Priory with the one-day fishing. Two months later (20th September, 1605) Hamilton assigned it to Phillips "for a certain sum of money" (E., 5, 191).

The letter, Chichester to Cecil, 8th June, 1604, outlines the Phillips sale. His suppression of Hamilton's name is full of meaning. Equally strange is the Deputy's failure to record the claim of Sir Randal MacDonnell to a fourth part of the tidal fishing. In fact the information Chichester gave the King as to the Bann was a tissue of falsehoods. Deception did not stop here. The "Project" uses words which refer only to the tidal Bann, but Chichester calls this "the moiety of the Bann," as if the non-tidal part of the river were clear of claim; and as if the "Project" dealt with claims on the whole river. His suppressions were as crafty as his assertions.

The Deputy so arranged things that the parchment title to the Bann, when the "Project" was despatched to London, stood thus: The non-tidal river, with Lough Neagh, was his own. Bishop Montgomery's ownership of a fourth of the tidal fishing, in right of the See of Derry, was admitted. Sir Randal MacDonnell's claim to another "fourth" was in dispute; and Chichester claimed the remaining moiety of the tidal Bann. As for Sir William Godolphin's 21 years' lease, rent had not been paid under it, and it could at any time have been evicted, yet it was carefully mentioned.

Whichever way the title stood, one striking fact emerges, viz. that, when furnishing his list of claimants to the King, the Deputy himself laid no claim to Lough Neagh or the Bann. James I. was not informed that he or Hamilton owned

a fourth, or a moiety, or a drop, of the river or lake. Only one explanation for such a silence is possible. If the Patents possessed royal authorisation, the "Project" would have mentioned them. If the excuse could be suggested that the "Project" dealt with the "royal," or tidal fishery only, the answer is that the King's known purpose was to grant the whole River Bann, from the sea to Lough Neagh, to the citizens of London. Besides, Chichester could not segregate the Bann into "royal" and non-royal, unless on the hypothesis that the Crown could lay no claim to the non-royal portion.

If, by virtue of the 11th Elizabeth, the river had been vested in the Crown, the whole Bann was "royal," and so was Lough Neagh. The invention of the epithet "royal" indicates an assertion of Crown rights in the fishery, but in reality the phrase was devised by his Majesty's officials to limit the King's title to the tidal Bann, and exclude the main river from his power.

The Attorney-General's share in the deception was as disloyal as Chichester's. Davies knew the importance attached by James I. to the Plantation. After Chichester's "Project" reached London, a Commission was appointed to inquire into, and make out an abstract of title for, the confiscated territories in each Ulster county, so as to inform the English Privy Council what lands it had to dispose of. Davies and Chief Justice Ley, among others, were named Commissioners. In order to shift responsibility to their shoulders as to the fishery grants, Chichester (14th October, 1608) wrote instructing them that: "They must remember to declare the fishings of the River of Lough Foyle, the Bann, and other places which are in this county [Derry] and what claims are made to them, . . . that the Lords may therein declare their pleasures" (S.P.I., 61). If the Bann belonged to himself, why did the Deputy not assert his title? Besides, his instructions were unnecessary, as the Commission contained the King's written commands. But if, after such instructions, the report of the Commissioners failed to show a claim by Chichester, it is plain that he was afraid to put one forward in such a way that a statement of his pretensions could reach the King.

Hence Ley and Davies furnished the London Privy Council with this certificate (23rd January, 1608-9): "There is no part of the temporal lands lying within this county granted to any person. All remaineth in his Majesty's hands, to be disposed of to Undertakers, except the moiety of the Royal fishing of the Bann, first granted by his Majesty to John Wakeman and his heirs in fee-simple, who bargained and sold his estate to James Hamilton, who, at the request and in the presence of the Lord Deputy that now is, made an absolute contract with the Earl of Tyrone, to convey to the said Earl, and to his heirs, the said fishings for £200; which £200 was afterwards paid by the Earl; but it doth not appear that any conveyance was made of the fishing by James Hamilton to the Earl before his departure. But the Earl took the profits thereof after the contract, and it is found by 'Office' in August, 1608, that the Earl at his departure was seized of the moiety of the fishing of an estate in fee, and that the said estate was come to the Crown again by the Attainder of the said Earl" (C. MS. and S.P.I., 1610, p. 562).

The "moiety of the Royal fishing of the Bann" was never granted, as the Attorney-General alleged, to John Wakeman. He got "the entire Bann" (*i.e.* the tidal portion), but it was soon discovered that this grant was untenable, because much of the tidal fishery was then in the hands of the Bishop of Derry, the Bishop of Down and Connor, and Sir Randal MacDonnell. The half of the "moiety" conveyed by Hamilton to Chichester was, therefore, all that it was deemed prudent or possible at that stage, to assign to the Deputy.

Davies' report contains no hint that the non-tidal Bann with Lough Neagh had been granted to Hamilton under Thomas Irelande's letter. This suppression of fact, in an official certificate, was of course solely in Chichester's interest. In the case of the tidal Bann, Davies had a year before assured Cecil that neither O'Neill nor O'Cahan had any title, but that the whole of Co. Derry vested in the Crown by force of the 11th Elizabeth. The story of a purchase of the Bann by O'Neill from Hamilton was not then suggested; nor was it put forward until O'Neill had gone into exile. The

absurdity of the Attorney-General's report is crowned by the fact that it begins by saying that everything in Co. Derry had escheated to the Crown " except the moiety of the royal fishing of the Bann " ; and concludes by avowing that this had " come to the Crown again " by O'Neill's Attainder.

The statement about a " moiety " of the " royal fishing of the Bann " being granted to Wakeman, was a device to confuse the King's advisers, who had in mind, not merely the tidal fishing, but the whole River Bann, from the sea to Lough Neagh. It was for this that the London Corporation were contracting. Yet, though all the fresh-water stream had been conveyed to Chichester by Hamilton, and half the " moiety " of the tidal fishing, the Attorney-General and the Chief Justice assure King James that no Crown lands in all County Derry had been " granted to any person " ; and that the " moiety " of the Bann given to Wakeman, passed to Hamilton, and then to O'Neill, had reverted to the Crown by escheat. In other words, that the King was in possession of the entire Bann, without a flaw in his title.

What James I. should have been told was that the Deputy and his friends had contrived that not an inch of the Bann or of Lough Neagh was left for the King to dispose of ; and that, since 1605, the Crown had no fishings therein to convey to anyone. It was vital for the King to know, in connection with his arrangement with the London Corporation, that the Deputy was asserting title to the Bann and Lough Neagh. Chichester fully realized how essential it was that the City of London should be tempted to take part in the Plantation. Yet, when required to furnish James I. with official and trustworthy information as to the fisheries, both Deputy and Attorney-General conspired to deceive him.

Davies, however, was duteously careful to tell the King a story about a sum of £200, alleged to have been paid by O'Neill to Hamilton, for " the moiety of the Royal fishing." Yet O'Neill nowhere mentions Hamilton's name in his complaints. A still more pregnant fact is that the Earl's ownership of the fishing, did not strike either the Attorney-General or the Deputy when deciding O'Cahan's case.

CHAPTER XIV.

THE CHEATING OF THE CITY.

CECIL'S letter of the 20th June, 1608, telling Chichester to "abstain from making any promise of the escheated lands," and that "not an acre would be disposed of" without prior approval in London, must have sorely disturbed him. His position, as the holder of a conveyance of Lough Neagh and the Bann since the 10th April, 1606, without the King's licence, was intolerable, especially since the Royal purpose to make a gift of the river to the London Corporation became known. Chichester's title, being dependent on unrecorded assignments from Hamilton, which in turn rested on a shady conveyance from Thomas Irelande and a fraudulent Patent *via* Wakeman, was worse than precarious. Some step he must take to strengthen his hold on the fisheries, while apparently freeing himself from all connection with them. He needed an implement which would serve both as a lock and a key at the same time, and this was no easy instrument to fashion. The Deputy however had keen advisers.

James I. had been induced to issue a Commission for Defective Titles, dated 10th June, 1606, larger in scope than that in force since 1604. Chichester (pressed by the news from London) determined to avail of the machinery of this Commission, to secure some sort of Patent before the King could dispose of the fisheries to the Corporation. This involved an illegality as gross as that by which spent and stale King's Letters were exhumed to convey the bed and soil of Lough Neagh and the Bann to himself.

The Commission for Defective Titles was intended to advance the King's interest, by enabling owners fearful of a

flaw in their Patents to surrender them, and, on payment of a composition or of higher rents, to obtain fresh grants. It was meant to be set in motion for Royal and public benefit. Chichester wrested it to his personal profit, and, instead of enriching the Crown, used his trust to sap the King's demesne. The Commission provided that persons confessing defective titles might purchase fresh Patents, with the consent of the law officers, if seven Commissioners certified their sanction to the Keeper of the Great Seal. The Commissioners were to hear applications and make their decisions in the " Castle Chamber," where the Deputy himself presided. Their names were listed by the King in the following order :

Sir Arthur Chichester, Knt., Lord Deputy of Ireland.

Thomas, Archbishop of Dublin, Chancellor.

Thomas, Earl of Ormonde, High Treasurer.

Richard, Earl of Clanrickard.

Donough, Earl of Thomond.

Sir Henry Brunkard, Knt., President of Munster.

Sir George Carie, Knt., Treasurer at Wars.

Sir Richard Wingfield, Knt., Marshal of the said Realm.

Sir James Ley, Knt., Chief Justice of the Chief Bench.

Sir Nicholas Walshe, Knt., Chief Justice of the Common Pleas.

Sir Edmond Pelham, Knt., Chief Baron of the Exchequer.

Sir Anthony Sentleger, Knt., Master of the Rolls.

Sir Jefferie Fenton, Knt., Principal Secretary of said Realm.

Sir Richard Cooke, Knt., one other of the Principal Secretaries, and Chancellor of the Exchequer there.

Sir James Fullerton, Knt., Muster Master General.

Sir John Davies, Knt., Attorney-General.

Robert Jacob, Esq., Solicitor-General of Ireland. (E., 299.)

This roll of honour included the " fine flower " of the royal establishment in Ireland, temporal and spiritual. Yet each individual was, or might become, a suppliant for favour himself. The judges were removeable, and the State offices and records were in Chichester's control.

In speeding this Commission, the King's " Instructions

for Ireland " (7th June, 1606) charged the Deputy with the following obedience :

" That he and his Council be very sparing in giving concordatums out of his Majesty's Treasury, alienations, etc.

" That such as may be given be upon very special grounds, and agreed upon only at the Council-table.

" That set times be appointed for . . . the new passing of lands upon weak or defective titles, for which Commission is now sent " (S.P.I.).

These instructions reiterated (or made more stringent) a former command in a " Royal Memorial for Ireland " (16th October, 1604), sent from England when Chichester was about to be sworn in : " That he look carefully to the King's revenue ; that set times be appointed for . . . letting the King's lands, and for the new passing of lands upon weak or defective titles, for which Commission is now sent " (S.P.I.).

Without the ease of such a Commission the obtainment of Irish patents was beset with pitfalls. The favour of high officials was essential, and the law and practice were intricate. The procedure—apart from this Commission—for securing a Patent was for unprivileged persons rather difficult. The first step was that a draft King's Letter, settled in Dublin on behalf of the claimant, was sent to Sergeant's Inn, London, where the " Committee on Irish Affairs " held session. If that watchful body were favourable, the " letter " was engrossed on parchment and sent to the King. If signed by his Majesty it was enrolled in the Signet Office and then despatched to Dublin. There it would be scrutinised by the Attorney-General and debated by the Lord Deputy and Privy Council. The heads of the " Letter " were then expanded into draft Letters Patent, but every line would first be wrangled over, between the suppliant's lawyers and those of the Crown. When the Patent was finally approved and engrossed, a copy would be filed in Chancery, and the original sealed and handed to the person entitled.

The King's Letters (as well as the Patents) were inscribed on vellum, and the skins were sometimes nearly four feet square. Owing to the double check of the enrolment of the " Letters " in the London Signet Office, and the subsequent

enrolment in Dublin of the Patents founded on them, the history of nearly every grant consequent on the confiscations of the seventeenth century can be traced, despite the confusions of the Civil War and of the Revolution.

The Commission for Defective Titles did away, for the time being, with this intricate practice, and rendered unnecessary any reference to London before the new grant was issued. Chichester therefore had provided himself by its machinery with what in effect was a handy mould for minting base coin. Doubtless when applying for it he had made up his mind to subvert the object of the Commission, and fabricate a Patent for Lough Neagh and the Bann in his own interest. It was a daring enterprise, and effectively served to cloak his acquisition from the King's advisers, while investing the grant with the semblance of Royal authority. Let us see how the title stood. On the Derry side, the Bann (at least in Crown intendment) was an "escheat," either by the attainder of O'Neill and the deportation of O'Cahan to the Tower, or, in the case of Monastery fishings, by the Act 33 Henry VIII., for the dissolution of the monasteries. On the Antrim side, the riparian owners of the Bann were Sir Randal MacDonnell to the North; the new proprietors of Claneboy to the South, and other intervening landlords.

The Deputy and Davies were accustomed, in speaking of O'Neill's fishing, to employ the phrase "moiety of the Bann," so as to suggest (when it suited them) that the "moiety" referred only to the tidal Bann, from the Salmon Leap at Coleraine to the sea.

As regards Lough Neagh, its ownership, according to English Law, apart from the assignment to Chichester, was not so simple. It could not be treated as if its title were a unit (*unum quid*), for no single tribe or chief ever held it. Its western shore bounded Hugh O'Neill's territory of Tyrone under his Patent. Its eastern shore bounded Claneboy, which was now parcelled out between Con O'Neill, Hugh Montgomery, James Hamilton, and others. But it had also a northern and southern shore of great extent, and the questions might arise respecting the riparian rights of owners

whose lands bordered its waters on the north, south, east, and west, as to whether the legal doctrine that a riparian proprietor owned " to the middle thread " was possible of application in the case of a vast square-shaped lake. The lawyers of America have refused to apply the doctrines of the Common Law to the great lakes of the United States and Canada.

Under the Brehon Code, which was in force in Ulster until 1607, no difficulty as to Lough Neagh could arise. Land was not owned by the Irish chiefs, but was the property of the Clans ; and the natives fished in the Lough as of right. It was not within the ambit of any Chiefry, but served as a boundary between various Septs. Lough Neagh divided Tyrone from Claneboy, and was never in the sole possession of any one Clan.

The confiscators in Dublin Castle, however, had a loose and convenient theory whenever they desired to annex property in Ulster. This was that the land they coveted passed to the Crown under the 11th Elizabeth, by reason of Shane O'Neill's attainder. Now, whether by English Law or the Brehon Code, Shane O'Neill no more owned Lough Neagh or the Bann than he owned the Caspian Sea or the Mississippi. By English law, Shane was a usurper, and the O'Neill estate was regulated by the limitations in Con O'Neill's Patent, which on Con's death vested in Mathew, and on Mathew's death in Hugh O'Neill. Under Irish law, Shane O'Neill had at most a life estate in what he held. His attainder, therefore, could not have passed anything to the Crown. Nor could Hugh O'Neill's outlawry help the Deputy or Hamilton to make title, as Lough Neagh was not included in Hugh O'Neill's Patent. As to the Bann, in which O'Neill undoubtedly held at least riparian rights, the Deputy's conveyances arose out of grants which issued two years before his flight and attainder. Thus, if the waters were then O'Neill's, no power could take them from him by the mere issue of a Patent subsequent to his own. In any view, the Commission for Defective Titles could not aid the Deputy as to the Antrim side of the Bann, which O'Neill never held. That Commission, moreover, was not empowered to invent title to a new acquisition, but was

merely authorized by the Crown to strengthen a doubtful title to something actually enjoyed, which the Crown might otherwise have claimed. It affected nothing as between subject and subject.

Its powers are contained in a King's Letter, viz. :

" The wars and troubles of Ireland being lately brought to an end, and his Majesty conceiving that it would much avail for the preservation and continuance of the publique peace, if all his subjects may quietly and securely injoy their private estates and possessions ; divers of whom, who had quietly injoyed manors, lands, etc., as well by descent as by purchase, upon good and just considerations, both by conveyance from other subjects, and also by grant from the Crown, are daily vexed, sued, and put to intolerable charges, by cullor of divers Inquisitions ; whereby their said manors, lands, etc., are to be concealed or unjustly detained from the Crown, upon pretence that the titles of said such subjects, holding said lands, etc., are in some strict point of law defective, voidable or defeasible.

" And his Majesty being desirous not only to free his subjects from such vexations and suits as have been already attempted, but to take away the cause of like molestation and charge hereafter ; and to the intent that such subjects, as desire to settle and establish their estates for themselves and their posterities, and to be discharged of the mesne profits, may, upon such composition as shall be agreeable to equity and good conscience, obtain Letters Patent, under the Great Seal, in such sort as their several cases shall require " a Commission, bearing date 10th June, 1606, was issued, authorising the Commissioners mentioned, " for ready money or sufficient security, to bargain and sell to any persons any manors, lands, tenements, rectories, tithes, pensions, oblations, meadows, pastures, closes, marshes as well fresh as salt, mills, woods, rents, etc., reserved upon Letters Patent ; as also rents, charges, commons, villaines, waste-grounds, leets, law-days, courts, waifs, strays, knight's fees, wears, pools, fishings, wards, marriages, advowsons, liberties, and other hereditaments ; to hold to them, their heirs and assigns, for ever, or for any other estate of inheri-

tance, with discharges of all the mesne profits of all the premises, directing that money arising by reason of the sale thereof, to be expressed in the Letters Patent to be made for same, and to be paid into the Exchequer, or to the Receiver-General; that the certificates of the Remembrancer of the Exchequer, the Clark of the Pipe, or auditors particular, surveyors of the King's lands or woods in Ireland, in whose office the said manors or other premises be, shall be a sufficient warrant for the discharge and sale of same, after the rate or yearly value, as the same shall be certified; that the Attorney or Solicitor-General shall examine the books, writings, and warrants to be made of the premises, according to the rates, bargains, and agreements to be concluded upon; that the books, warrants, etc. to be engrossed and subscribed by the same persons, shall be sufficient warrant to the Commissioners to subscribe same.

"That the transcript thereof, signed by seven of the Commissioners, shall be sufficient warrant to the Keeper of the Great Seal to pass the Letters Patent under the Great Seal, the Patentees paying the fees due for the Signet and Privy Seal, as heretofore; that all such Letters Patent shall be as effectual in law, etc. as if the same had passed by the King's Warrant, etc.; that the justices, learned counsel, and other officers shall be attendant with the Commissioners to resolve all such doubts as shall arise upon any statute, law, etc. that Christopher Paton, Auditor of Ireland, or such a one as the Commissioners think meet, shall keep their books of rates, and cast up same, and that Vice-Treasurer and Chancellor of the Exchequer shall appoint other necessary auditors, clarks, and persons to attend upon them, for further writing, casting and doing such other things as belong to the execution of this Commission; all whose pains, travels and attendances, as also the Commissioners' charges for sitting and attending, about the premises, shall be satisfied by warrant under the hands of the Commissioners, directed to such persons as shall have the receipt of the moneys to be paid upon such sales; to whom it shall be lawful, not only to make payment thereof, but to take allowance of same in the declaration of their account, etc.

"Provided always the said Commissioners shall not bargain or sell any manors, lands, etc. whereof the annual rents have been answered in the Exchequer, or put in charge, or stood *insuper*, before the Auditor of the King's Revenues, sithence the beginning of the reign of Queen Elizabeth, other than by reason of any Patent or concealment; and other than upon grants made in fee farm, so as the rents thereupon reserved, and not the land, hath only been put in charge, or stood *insuper*, as aforesaid.

"Provided also, the said Commissioners shall not have power to bargain and sell any manors, lands, etc. granted in tail, whether the same estate be determined or not; but authorising them to bargain and sell any manors, lands, etc. granted to any persons or their heirs, or of any other estate of inheritance, by Patent, since the 27th year of Hen. VIII.; Patents of concealment excepted, for such or the like estates as by such Patents is mentioned.

"Provided also the said Commissioners shall not bargain, or sell, any manors, lands, etc., granted by King James or the late Queen Eliz., for lives or years, without rent, or without rendering anything thereout—but empowering them to bargain and sell any manors, lands, etc. granted for good considerations to any persons or their heirs, or of any other estate of inheritance made by the late Queen or King James, since the beginning of his reign, Patents of concealment excepted, for such or the like estates as in such Patents are mentioned—and this Commission to endure until the King's pleasure shall be declared to the contrary," etc. (E., 299).

This document conferred no authority on the Deputy as the principal Commissioner to wrest it to his own purpose. Chichester's claim to the territories and waters conveyed by Hamilton had not been impeached as "defective." How, then, could he call in aid a Commission for Defective Titles? Even had his conveyances possessed legal flaws, he, as one of the Commissioners, could not properly have been a suitor before himself. No one knew of the assignments from Hamilton save two or three confederates. No prying or curious eye had investigated the deeds, for they were not enrolled. No Crown lawyer had attacked his title under

either the Wakeman or the Irelande Patent. The Statute requiring prior licence from the Crown to an officer of the King, for the taking of any land from anyone, prevented outsiders from even suspecting that the Deputy was guilty of the forbidden thing. Much less could anyone think him capable of filching Crown property for himself, and using the Commission, of which he was the head, to try to make title to the stolen goods.

For what legitimate purpose or occasion could a Lord Deputy resort to such a Commission without apprising the King ? Yet that he procured an enlarged Commission with a view to his own case is probable ; and that he prostituted it to personal and sordid purposes is certain. Some steps, no doubt, he took to quiet the scruples of his fellow Commissioners. Under the Commission for Defective Titles, no King's Letter was necessary as a foundation for a Patent. Chichester caused a draft to be sent to London for signature by James I., which, without giving any inkling of the object it was to subserve, could be used as an argument to justify a Patent from the Commissioners. It received the Sign-manual on the 2nd April, 1607, and was principally concerned with the temporary sequestration of Sir Randal MacDonnell's rights in the Bann. It embraced, however, a proviso of a wholly different nature. This was a power to accept a Surrender from Hamilton of his estates, and to enable " one or more Patents " to be granted him or " his assigns." The operative words are :

" To take a surrender from James Hamilton of all the lands, etc. (or so much of them as he may think fit), held by him by Letters Patent under the Crown, or as assignee of John Wakeman, the King's Patentee ; and to regrant the same, by one or more Letters Patent, to the said James Hamilton, his heirs and assigns without fine, to hold the same of the King, at the former rent and conditions " (S.P.I., 133).

This was endorsed by Chichester's hand, as received on the 4th June, 1607. No one in London knew the use that had been made of the Wakeman Letter after it became spent in 1603. No one could have dreamt that it had been

perverted in 1606 to the purpose of passing the tidal Bann to Hamilton. Not a word in the King's Letter apparently concerns Chichester, and James I., knowing nothing of the huge abstraction from the Royal demesne under the Irelande-Wakeman grants, was quieted by the stipulation that whatever was new-conveyed should preserve the former rent to the Crown.

Three months earlier, viz. on the 14th March, 1607-8, the Deputy obtained another Royal warrant :—" To make a new grant, or grants, to James Hamilton and his assigns, of certain manors and lands passed to him by former Patents, for strengthening his title against Sir William Smith, who sought to impeach the same " (S.P.I., 436). Chichester had received the King's licence for a grant to himself of the Belfast territory claimed by Sir William Smith ; and on the 24th January, 1607-8, he thanked Cecil, " For the favour shown to him and others, in stopping a suit lately preferred by Sir William Smith, for reviving a title which he pretends to certain lands within the Counties of Down and Antrim, which otherwise would have drawn them to great travail and expense, whereby the country would have remained waste, and he himself would be in no way benefited " (S.P.I., 398).

No fresh Patent for Hamilton was necessary (as one would infer from the King's Letter), nor was any issued. That of 1605, granting him a third of O'Neill's lands (claimed by Smith), was most carefully drafted. It follows that the obtainment of the King's Letters in 1607, so far as Hamilton was concerned, was a blind. They were got to satisfy doubting Commissioners that a new Patent, at which Chichester was aiming, could be granted. As to the permission to take a surrender from Hamilton, no subject could surrender a Royal grant (or receive one) without express sanction from the Crown, because a surrender, if accepted, must diminish the King's rents, and no grantee could be relieved of such an obligation without Royal licence. Lough Neagh and the non-tidal Bann, with much other property, had passed out of Hamilton's possession by his conveyances to the Deputy, and if anyone was to

effect a surrender it should have been Chichester, and not Hamilton.

Hamilton, however, never surrendered his Patent of 1605, nor accepted a re-grant. The Royal Letters authorising such surrender and re-grant served merely as an expedient by which the issue of a Patent under the Commission for Defective Titles was made plausible. Hamilton had already executed assignments both to Thomas Phillips and Chichester, and had nothing further to surrender that he intended to part with. The Deputy, to whom Hamilton had assigned Lough Neagh and the non-tidal Bann, made no surrender. Nevertheless the Commissioners for Defective Titles saw their way to issue a Patent in his favour, but as it was illegal to pass any lands to a Minister of the King, without Royal licence, and Chichester was the principal Commissioner, the grant was made to " our dear Arthur Bassett of Dublin " in trust for the Deputy.

Desperate cases need desperate shifts. Bassett was Chichester's nephew, and his mere utensil. He owned no lands anywhere in Ireland, and, of course, had no " defective title." Bassett was a young man from Devonshire, brought over by his uncle to fill the post of Provost Marshal for Munster, which he got on the 10th March, 1606 (E. 277). For his services, Bassett was afterwards knighted ; and, at his death, was buried in the same tomb as Chichester at Carrickfergus. The acknowledgment of his relationship is to be found in a letter of 26th June, 1616, penned when Chichester had ceased to be Deputy. He then wrote to the Lord Admiral, recommending Bassett to the command of a vessel to serve against pirates :

" I have bethought of a nephew of mine here . . . Mr. Arthur Bassett ; one that hath long since done service in that kind, not out of necessity and straitness of state, but with a mind to well-deserving. . . . I do hereby present him to you, in the state and general representation of a very honest man, that will not be tainted wilfully with the usual infection of seamen . . . to be hastily rich by rapine and base gain " (T.C.D. MS.).

The name of this honest person was, therefore, inserted

instead of that of the Deputy in a Patent which Chichester, as head of the Commission for Defective Titles, issued on the 1st July, 1608.

The baseness of the transaction receives the stain of additional meanness from the recital that the grant was made in consideration of £20 paid to the Crown. This was false, for no £20 was anywhere lodged. Yet the precaution was taken of declaring that " our dear Arthur Bassett of Dublin " held the estates so conveyed to him in trust for his uncle.

Thus the King's Seal was set to a parchment by which James I. was deprived of property in half-a-dozen counties, including the fisheries of Lough Neagh and the Bann. It was done in Dublin by a local Patent, which dispensed from the necessity of a King's Letter, and by that device the London authorities were kept in the dark as to the abuse of the Commission of which Chichester was the head.

There might only be a touch of drollery in a high-placed uncle posing his youthful nephew to masquerade as an ancient proprietor, who, being afflicted with a Defective Title, was worthy of Royal cure by the medicaments of the Great Seal. But Chichester accomplished another purpose. By this feat he smuggled to Bassett a long-disputed property, the legal title to which he was himself trying in the Privy Council as between Hamilton and Sir Randal MacDonnell. For the Patent also included the grant of a " fourth " of the tidal Bann—a most valuable fishery. This was the Deputy's price for the juggle whereby he had previously sanctioned the gift of the " entire Bann " to Hamilton, under the Wakeman King's Letter—assigned to the " Scot " through Mr. Auditor Ware and Mr. Secretary Cook.

CHAPTER XV.

THE FRAUD ON THE CROWN.

The debasement of the Commission for Defective Titles set a squalid example to the underlings of the Executive. It was not palliated by the concession of an additional rent to the Crown, on any of the "parcels" conveyed to Bassett save one. The "parcel" which bore this increase, and the amount of the increase, possess considerable significance. In the Carew MS. (vol. iii. p. 73), the additional Crown rents, accruing under the Commission for Defective Titles to the 30th June, 1611, are given. The names of the new patentees are also set forth; but those of Bassett, Hamilton, and Chichester are conspicuous by their absence. The enrolment of Bassett's Patent, however, shows that, for the "parcel" which conveys the fisheries of Lough Neagh and the Bann, an increased rent was imposed, and that the amount was tenpence! Paltry as the sum was, the change attracts attention, and forms the prelude to another extraordinary story. In the original grant of 1606 to Hamilton, the rent for Lough Neagh and the non-tidal Bann was 12s. 6d. In the prior Antrim Inquisition of July 12th, 1605, the value placed on the fishery on the Eastern shore of Lough Neagh "towards Claneboy" with the Toome weirs on the Bann was 13s. 4d. The rent of this "parcel" in Bassett's Patent was raised to 13s. 4d. That of no other parcel was changed except Lough Neagh and the Bann.

Before probing the motive for the alteration, we must premise that no entry of any payment of rent by Chichester for the fisheries appeared in a Crown rental while he was Deputy. The total rent reserved by Bassett's Patent,

which consisted of fourteen "parcels" at separate rents (including 13s. 4d. for the fisheries) was £16 13s. 4d. Not until Chichester was arranging to embark on a fresh enterprise, to obtain a King's letter for another new Patent a dozen years later, was his alleged ownership of Lough Neagh and the Bann recorded in a Crown rental.

Soon after the issue of the Patent to Bassett another device was adopted to shift it back to Chichester. The Deputy would not trust "our dear Arthur Bassett of Dublin" with the custody of the spoil for six months, and immediately obtained a re-conveyance to himself. This assignment from Bassett was not enrolled, any more than were the assignments from Hamilton to Chichester.

The Patent issued by the Commission for Defective Titles to Bassett was dated 1st July, 1608, and, on the 23rd January, 1608-9, Bassett re-conveyed to his uncle the whole of the estate. As to the sham consideration recited for its issue, suffice it to say that the £20, if paid, would have been recorded in the return printed in the Carew MS. The process of the Commission was thus turned into a mummery, except in so far as it subverted the legitimate objects for which the King clothed it with power. "Our dear Arthur Bassett, of Dublin," was made the object of the grant so as to relieve the Deputy from illegality and conceal his trafficking with Hamilton. There is no recital of derivative title; and the increased rent of tenpence for the "parcel" of Lough Neagh and the Bann (13s. 4d. instead of 12s. 6d.) was doubtless intended to link the Patent with the Inquisition of Antrim of 1605, and make the rent seem less ridiculous. The change, too, served another purpose.

Every step Chichester took, and every line he wrote, was fraught with meaning. So the tenpenny increase of rent symbolised another fact of high importance. This was that Bassett's Patent contained an extension of the right of fishery assigned by Hamilton to the Deputy. What was this extension and how was it obtained? What title was produced to the Commissioners for Defective Titles to warrant it? By their parchment Bassett was granted not only Lough Neagh and the Bann, but one-fourth of the tidal

fishing which was then in dispute between Hamilton and Sir Randal MacDonnell. It also granted a fourth part of the Salmon-Leap at Coleraine, where an active catch proceeded by hand-nets (called " loops ") as the salmon jumped from the tidal to the fresh water. The words of the Patent were further widened to confer a right to " the taking of all kinds of fish between the Salmon-Leap and the sea," which, if it meant anything, gave not merely one-fourth of the tidal fishing, but the right to an unlimited catch in the tideway. It runs :

" The King's entire fishing of all kinds in Lough Neagh, otherwise Sidney, and the River Bann, with the soil thereof, from the said Lough to the Salmon-Leap in said river, with certain old eel weirs on the Bann, the fourth part of the Bann in said counties in Ulster, from the Salmon-Leap northward to the sea, with the fourth part of the said Salmon-Leap, and the fourth part of the fishing there, and the taking of all kinds of fish between the same and the sea.

" Rent of the fishing, 13s. 4d. Irish. To hold forever, in virtue of the Commission for Remedy of Defective Titles " (C.P.R., 6th James I., 122, and S.P.I., 120).

What was the warrant for this ? Such an extension of a Patent was beyond the scope of the Commissioners' jurisdiction. That, however, did not trouble Chichester. In a deed made three years later (May 14th, 1611) he set forth that Hamilton, on 3rd April, 1606, sold him " the moiety of that part which he had of the fishing of the Bann, from the Salmon Leap to the main sea, with the soil and ground, weirs and fishing places within the said limits." No other evidence exists save this recital, that such an assignment was made, but assuming its due execution, the resultant Patent became the keystone of the arch erected by Chichester to support his title. Until Bassett's Patent adopted 13s. 4d. as the rent, 12s. 6d. was the reservation for Lough Neagh and the non-tidal Bann. The Inquisition of Antrim in 1605 found that " the moiety of Lough Neagh towards Claneboy," and certain eel weirs on the Bann, were in the Crown, and were of " the value, after deductions, of 13s. 4d." Nevertheless a Crown rental of 1619 gives the rent as 12s. 6d.

and ignores the increase of 1608, and the surrender of the Bann by the Deputy in 1611.

It follows that Bassett's Patent is a document of high importance to consider when investigating the genuineness of the Chichester title. Yet it was excluded from the notice of the tribunals which in the twentieth century reversed the decision of the House of Lords in the nineteenth, as to the ownership of Lough Neagh. The claimants to the Lough never mentioned that such a Patent existed on the Chancery rolls, and even negatived the possibility of its existence by an archivist's affidavit. For, that "fourth part of the Bann, of the Salmon-Leap and of the fishing there," which Bassett's Patent tacked on to Chichester's possessions, has a history which deepens the Deputy's disgrace. We have shown that at the moment when it was being fabricated, its leading manufacturer had the question of Sir Randal MacDonnell's "fourth" of the tidal Bann in litigation before himself in the "Castle Chamber," with Mr. James Hamilton as mock plaintiff. When the Deputy, as the presiding judge (flanked by his men of war and law), ruled against the validity of Sir Randal's claim, MacDonnell petitioned the English Privy Council for redress. Meanwhile Chichester seized on the disputed "fourth" himself, and inserted it in Bassett's Patent. Thus he gratified his revenge while enlarging his estate.

To make this fresh knavery fully understood, a story different in texture from that of Hugh O'Neill, but akin to it in result, must be told. James I., two months after his accession, gave enormous territories in North Antrim (333,907 acres) bordering on the Bann to Sir Randal MacDonnell (E. 8, 52, 137, 166). The grant (28th May, 1603) reserved to the Crown three-fourths of the Bann fishing; and thus left a "fourth" unconveyed by express words, though assumed by implication to be Sir Randal's, as riparian owner. For years Hamilton and MacDonnell wrangled over this at the Privy Council. Hamilton (as the stalking-horse for Chichester) contended that, as he received a grant in 1606 of the entire tidal Bann (under the Wakeman Letter), the reservation by the Crown of three-fourths of

the fishery, in Sir Randal's Patent, was not equivalent to a grant of the remaining fourth. The Deputy grimly watched the moves of the pawns, and, as in the case of O'Cahan *v.* O'Neill, decided the suit according to his own interest. The facts will hereafter be fully analysed.

Randal MacDonnell, the future Earl of Antrim, was the second son of the famous Sorley Boy of the Isles, who held North East Ulster against both English captains and Irish chiefs in Elizabeth's reign. His clan possessed the Antrim "Glens" since 1399 (M.A., 78). Randal married Elice O'Neill, a sister of Hugh O'Neill's, and his family was one of much importance in the closing years of the separate Scottish monarchy. Sorley's eldest son, James MacDonnell, who died in Dunluce Castle in 1601—poisoned, it is alleged, by Elizabethan emissaries (M.A., 192) on his visit to Edinburgh in May, 1597, was made much of by King James, who, having knighted him, caused the cannon of the Castle to be fired off in his honour at his departure (M. MS., 24). Their father's faring in Ireland is best told in Sorley's letter of submission in 1573 to Lord Deputy Sydney, and in Queen Elizabeth's subsequent grant of "Denization." Sorley feigned a surrender which was merely diplomatic :

"Being a man born out of this realm, and gotten large possessions in the same, whereupon I lived, though I might claim none by inheritance, I have very inconsiderately presumed to think I might as well hold it as I got it, by the strong hand. Carried on with this imagination, as one ignorant of her Majesty's might and force, and withal ill-persuaded by others, I unhappily refused to come in to your lordship, as the rest of Ulster did, almost now two years past ; thinking it might suffice for me, on your lordship's repair into these parts, to write a letter of some kind of observation unto you, with an offer, after a sort, to come myself also upon such capitulations as now, to my smart, I find were unmeet for me to make. But your lordship having no mind, as it well appeared, to make advantage of my rash oversight, vouchsafed to licence the Earl of Tyrone and Edward More to send unto me such gracious conditions as I grieve to think I refused them, and

with the unadvised letter I writ unto your lordship, the haughty words I uttered, and the indiscreet demands I then made (to have men of far better sort than myself to be in pledge for me), I wish were buried up in forgetfulness. I condemn my folly in leaving such men in the Castle of Dunluce, within this her Highness's land, as should say, they kept it in the name and to the use of the King of Scots, a prince that honoureth her Majesty and embraceth her favour. I sorrow for my perseverance in that purpose, whereby I have unjustly drawn her Majesty's force, and whet her Majesty's sword, against me, which hath slain my son and most of my people, spoiled me of my goods, and left me with a few distressed, being in no way able to stand against her Majesty's force ; wherefore I do prostrate myself at the feet of her Majesty's clemency, humbly submitting myself wholly thereto " (D.C.H.).

Elizabeth's grant to Sorley (14th April, 1573) runs :

" We are given to understand that a nobleman named Sorley Boy, and others, who are of the Scotch-Irish race, and some of the wild Irish, at this time are content to acknowledge our true and mere right to the Countie of Ulster and to the Crowne of Ireland, to profess due obedience to us and our Crowne of England or Ireland, and to swear to be true subjects to us and our successors, as other or natural subjects born in the English Pale, be or ought to be, submitting themselves to our laws and orders, upon condition that they may be received as denizens of England and Ireland ; and we (being willing by all gentle means to bring the strayed sheep home again to the right fold, and to maintain peace and quietness in the realm, and to refuse none that will acknowledge their duty) are content that any mere Irish or Scotch-Irish or other strangers who claim inheritance, or shall hold any lands, or be resident in any place which is within our grant made to Sir Thomas Smith and Thomas, his son, now Colonel of the Ardes and Claneboy, who will be sworn as true lieges to us and our successors (as the denizen strangers do swear in the Chancery of England) before the said Thomas Smith, junior, or the Bishop of Down, accompanied with other discreet persons, and from that day

be content to hold their lands of us and the said Colonel, and shall pay yearly to us 20 shillings for every plowland, as all Englishmen, followers of the said Smith, pay, shall be reputed and taken for denizens and not for mere Irish; and that the said Smith, or the Bishop of Down, may take the said oath during the space of seven years; and upon a certificate of the Colonel, of any person or persons having taken the said oath, the Lord Deputy or Chancellor shall cause letters of denizenship to be passed to him or them, including twelve in each patent, if it should be considered convenient" (M. 553).

Sorley's second son, Randal, having married into O'Neill's family, "rose out" with the Earl, but like O'Cahan took his pardon from Elizabeth before O'Neill himself submitted. King James's sympathy with the rebels was unconcealed, and the grant Randal received a few weeks after the Crowns were united, affords another proof of the alliance of the King with the Ulster chiefs (M. MS., 24). So intermixed were Scottish and Ulster titles in the days of James I. that Randal MacDonnell had afterwards to oppose a claim by the Crown to annex Rathlin Island to Scotland. In the dispute was pleaded, on Sir Randal's behalf, O'Dinnigan's Report of the History of the Cantreds of the Glens of Antrim from the *Life of St. Columb*, A.D., 563, viz.:

"A controversy arising between the inhabitants of the Glens of Antrim and the Scots of Dalriada in Scotland, the Scots affirming that they were descended of the same King as the gentry of Dalriada in Ireland, and that the King of Ireland ought not to contend with them, because they were of the same house; while the men of Ireland affirmed that the Glens were theirs, and that they must deliver them the seigneuries and chiefries of their land, St. Columb was requested to decide, but he declined, as he had prophesied when he was going eastward that Columbanus should pass judgment.

"Accordingly decreed, that the rents, duties and risings-out to service, should belong to the men of Ireland, and ordained that whenever any Scottish regiment or great troops of poets and antiquaries came out of Scotland to

Ireland, that Dalriada should give them meat, and should send them back at their cost to Scotland if they found no other means.

"This judgment was passed by Columban betwixt Hugh, King of Ireland, and Henghan, King of Scotland, before St. Columb and the men of Ireland, at the assembly of Drumcath, in the year of our Lord 563.—From Dann Linusi, 13th October 1618" (S.P.I., 215).

Chichester maintained a vendetta against Sir Randal, partly in revenge for the execution of his brother, Sir John Chichester, by the MacDonnells; partly because of Randal's marriage with Elice O'Neill; and partly because of his desire to complete the capture of the Bann.

So his earliest relations with the MacDonnells were unfriendly. This appears by letters to Cecil from Carrickfergus, during the Elizabethan campaign. On the 12th April, 1601, he wrote: "I received letters from Sir James MacDonnell; or rather written in his name, for I think himself dead. . . . He hath sent me word (or the country for him) that Randal shall succeed him, who is yet in Scotland; and I think the poor people would fain be under honester masters. All that I could imagine of his writing (if he mean not honestly) is to delay time, rather to enjoy the quiet fishing of the Bann for this season, etc." He encloses an intercepted letter from MacDonnell to Stafford (who was in command at Carrickfergus) begging him to cause Chichester to be displaced (S.P.I., 272).

On the 15th April, 1601, Chichester wrote direct to Sir James MacDonnell (whom he thought poisoned), that he had intercepted the letter praying his dismissal, but soothingly added: "I ever thought my brother was slain by accident of war, and not by your treason. And so, believe, I bear you no private malice. If I did, I must lay it aside for the public good" (S.P.I., 274). Chichester knew, of course, that his brother was beheaded by the MacDonnells, and poison soon gave him his revenge.

On the 12th April, 1601, he reported to Cecil that the Lord Deputy "willed me to deal justly with Sir James MacDonnell, which I have ever done . . . though I know him

a false and treacherous traitor" (S.P.I., 270). On the 6th November, 1601, he wrote: "O'Cahan and Randal are two of the richest and strongest assistants of Tyrone."

Chichester naturally distasted grants to ex-rebels by a Scotch King who had abetted them; so Sir John Davies cast doubts on Randal's fishery rights under the Patent of 1603. On the 14th June, 1606, the Deputy wrote to Cecil: "Sir Randal MacDonnell is neither faithful nor obedient, as some late actions of his brother's, upon his command, hath laid open, as Mr. Hamilton could at large inform you." Hamilton was sped to Court to attack MacDonnell, but thither flew Sir Randal to counteract his influence. In the tug-of-war MacDonnell triumphed, for his clan in Scotland was of importance to King James, but on his return to Ireland he found that the Deputy's hostility brought his victory to naught. Sir Randal then wrote to Cecil (16th July, 1606):

"Upon his arrival, found himself dispossessed of the fourth part of the fishery of the Bann, which his Majesty was pleased to grant him by Patent, being the best stay of his living. This was wrought by means of one Mr. James Hamilton, who, searching and prying curiously into his Patent (as he doth into many other man's estates), seeks to take advantage upon words and other sly causes, thereby to void his interest and to pass it to himself, upon other men's grants, which he had purchased. He is now possessed of great countries, yet is not contented therewith, but seeks to pull from him the little portion which his Majesty hath been pleased to bestow unto himself.

"In this device Captain James Phillips, being formerly his (Sir Randal's) farmer of that fishing, hath joined with Hamilton, and by that means he is put from possession, they having laboured warrants to that effect by consent between them. Besides this, Phillips hath procured two several informations to be laid against him in the Star Chamber, suggesting that a riot was committed by some of the people of the country about the said fishing, etc.

"Beseeches him to write to the Lord Deputy that he may use him no worse than the rest of the gentlemen in the

Province of Ulster, nor to be a partial judge betwixt him and those that take his fishing from him " (S.P.I., 518).

Although the London visit resulted in a second Patent in Sir Randal's favour, issued 18th July, 1606 (E., 274), the Deputy stubbornly supported Hamilton, who, of course, was throughout secretly acting for himself. His bitterness breaks out in a letter to Cecil (12th September, 1606): " Among them all, there is not a more cankered and malicious person than Sir Randal MacDonnell, who from a beggar is made great, and yet rests unthankful " (S.P.E., 566).

On the 2nd April, 1607, Chichester secured a King's Letter (which bears his personal endorsement) setting forth : " Sir Randal MacSorley's (MacDonnell's) followers having riotously asserted the said Sir Randal's right to a fourth part of the fishing of the Bann (Sir Randal having by surprise obtained the King's Letters dissolving a sequestration of the same fishings, made by the Deputy and Council, pending a suit at law) the sequestration is to be re-imposed until the said suit at law be determined."

Nothing daunted, Sir Randal, on the 2nd July, 1607, presents Cecil with a " cast of falcons, as a simple token from a humble servant. Has written to Mr. Hadsor [the Crown lawyer in London for Irish affairs] who, he hopes, will impart to him the particular of the business at length, his only hope being in him, next to God and the King's Majesty " (S.P.I., 218). His falcons struck quarry ! On the 22nd August, 1607, a warrant from the King reached Chichester : " To dissolve the sequestration of the Bann, and to take order that Sir Randal MacDonnell should enjoy his portion of it. (Signed) Salisbury " (S.P.I., 252).

This was an unexpected blow to the Deputy, but a few weeks later, the Flight of the Earls (September, 1607) changed the whole Irish situation, political and territorial, and greatly strengthened his power. A letter from Chichester to Cecil (15th January, 1607-8) contains the admission that he presided over a hearing of the trial between himself (under the name of Hamilton), and Sir Randal :

" It may please your lordships to understand that the

cause in controversy between Sir Randal MacDonnell and Mr. James Hamilton, concerning the fourth part of the fishery of the Bann, some time debated before me, and order thereupon made, by myself and the Council, is now upon some occasion controverted and drawn before your lordships ; and for that you may be better judges of the state thereof, I have caused the King's learned counsel here to draw the case truly, according to the records—a copy whereof, together with my letter to your lordships, I have sent to Sir Randal MacDonnell, and another copy to Mr. Hamilton. The original, signed by Mr. Attorney and Solicitor, I think fit to send herewith, to the end that, if the case be called upon, you may, with the assistance of learned counsel, if your lordships please, determine the truth thereof."

(A bare mention of this letter appears in the *State Papers*, p. 395. For the original see Vol. 223, 36 (2), L.R.O.)

Such a document affords decisive proof that Chichester, as judge at the trial, decided against Sir Randal and in favour of Hamilton. Unfortunately, the order he made is not now forthcoming. While Sir Randal's appeal to the English Privy Council against it was pending, the Deputy, on the 1st July, 1608, caused Bassett's Patent to issue, including in it Sir Randal's fourth of the tidal Bann—the right to which he had been trying as judge in the Castle Chamber. This he possibly excused to himself by the plea, that he had purchased Hamilton's " moiety " of the tidal river, although no enrolment or trace of the conveyance can be found outside the " recital " in the Deed of 14th May, 1611, already mentioned. This will be set out later on. Hadsor, the Court lawyer, to whom Irish legal affairs were referred in London, was in league with Davies, and in 1616 took profit in a juggle between the Attorney-General and his father-in-law, Lord Aubrey and Hamilton, by which Hadsor secured an Ulster estate (P.U., 452).

Ignorant of the issue of the Bassett Patent or the Hamilton Conveyance, Sir Randal, on the 19th August, 1608, wrote to Cecil :

" When he took leave of his lordship at the Court at

Greenwich, he was pleased that his fourth part of the fishing of the Bann, being in controversy between Mr. Hamilton and himself, should remain as it was the former year, in sequestration ; and that neither of them should reap any benefit of the rent of the same, until the controversy was decided by law.

" Sir Thomas Phillips, upon whose hands the same is sequestered, pays the yearly rent of the fishing privately unto whom Mr. James Hamilton will appoint there ; and thereby thinks to deprive him of his rights to the fishing, to his great loss. Beseeches his lordship to let him have his own fishing, and that the Bishop of Derry be appointed sequestrator " (S.P.I., 21).

The reply of the Privy Council to Chichester, 31st October, 1608, was : " As Mr. Hamilton has prayed that Sir Thomas Ridgeway be appointed sequestrator, and Sir Randal MacDonnell has demanded that the Bishop of Derry be appointed, the Lords of the Council suggest that they be appointed joint sequestrators ; and, if they are not content with this arrangement, the Deputy to appoint some indifferent person as sequestrator " (S.P.I., 92).

The idea of the Deputy appointing " some indifferent person " as Sequestrator, exhibits the quantum of knowledge possessed by the Council in London of affairs in Ireland. Closely in touch as Chichester was with Bishop Montgomery, he evidently distrusted him as regards the fishery, for the Bishop asserted title to a fourth of the tidal Bann himself, and of this Wakeman's grant would have deprived him. Sir Randal doubtless calculated on this distrust, and on the Bishop's interest with the King, but his hopes were frustrated by the Deputy. What disposition he made is not clear, but it was certainly hostile to Sir Randal, who again complained to London, and, on the 24th April, 1609, the Privy Council sharply wrote to Chichester :

" Have been informed that, upon the differences regarding the fishing of the Bann, which have grown up between Sir Randal MacDonnell and Mr. James Hamilton, he has sequestrated the profits, as well to the quarter claimed by Sir Randal, as to the moiety on Tyrone's side, to which Mr.

Nicholas Weston pretends some claim. Direct trial with all convenient speed, and that his Majesty may be no further importuned in the matter" (S.P.I., 199).

In 1610 the Deputy "directed trial" in more senses than one. By a decision of the "Castle Chamber" (Chichester again presiding) he caused the grant of the fishery to Sir Randal to be declared void. This is known as the "Case of the Royal Fishery of the Bann," and Davies' famous report thereon will be subsequently examined.

Before Chichester's unjust decision, the Chief of the MacDonnells was defamed in another forum, whose decree affects the world to all time. The tragedy of "Macbeth" was staged for the first time in 1610 in London, shortly before the "Castle Chamber" in Dublin pronounced judgment. Therein Shakespeare draws a picture of another Chief of the Isles which was unlikely to impress the public favourably. Its least offensive passage is:

> . . . "The merciless MacDonwald
> (Worthy to be a rebel, for to that
> The multiplying villainies of nature
> Do swarm upon him) from the Western Isles
> Of kerns and galloglasses is supplied;
> . . . . But brave Macbeth
> Unseamed him from the nave to the chaps
> And fixed his head upon our battlements."

Was the beheading of Sir John Chichester, or the murder of Shane O'Neill by the MacDonnells, before Shakespeare's mind? In Hollinshed, whence he took the plot, the name of the rebel chieftain is "MacDowald"; but MacDowall was Prince of Galloway, and had no connection with "The Isles." The alteration into "MacDonwald" seems to breathe the actualities of life in 1610. Malone's criticism on the change attributes it either to "inadvertence or choice," but he points out that the poet had read in the *Scottish Chronicle* of the crime of one Donwald (*S.V.S.* vol. x. pp. 17 and 317). Perhaps, as "rare Ben Jonson" was on such confidential terms with Cecil that he wrote him (8th November, 1605) about the Gunpowder Plot (C.P.S.

Dom., 245), so Shakespeare's alteration of the name was due to his acquaintance with those whose experience in Irish warfare inspired disparagement of Sorley's son.

In later years Sir Randal, when Chichester and Cecil were in their graves, was made Earl of Antrim by King James, and remained in favour with Charles I., who redressed some of the wrongs done him by the Deputy in connection with the issue of Patents.

CHAPTER XVI.

DECEIVING LORD SALISBURY.

In January 1608-9, Cecil learnt, through Sir Randal MacDonnell's complaints, of the grant of the tidal Bann to Hamilton, and evidently smartly rated Chichester for allowing it to be alienated from the Crown. The conveyance of the tidal fishery was made under the Wakeman Patent, but what would Cecil have said had he known that, under the Thomas Irelande grant, the Deputy had seized the rest of the stream, and also Lough Neagh? We only know of Cecil's complaints through the replies of the Deputy preserved by the Government in London. Chichester never kept any document unfavourable to himself, and no copies of Cecil's despatches exist at Hatfield. The Deputy's answer, dated 23rd January, 1608-9, conceals his own acquisitions, and throws all the blame for the grant of the tidal Bann on the Earl of Devonshire (Mountjoy). It is a welter of misrepresentation:

"Your letters, mentioning your dislike of the grant passed of the fishing of the Bann, came to me on the 20th January. . . .

"Soon after I came here I received instructions from the Earl of Devonshire to pass the fishing to one Wakeman, upon the Book of fee-simple given him by the King. But, as I understood that the grant would discontent the Earl of Tyrone, who pretended title to the moiety thereof, and Sir Randal MacDonnell, who demanded a quarter, I had so provided that the Earl (of Tyrone) should have a moiety for 40 years' purchase, by assignments from Wakeman. I afterwards gave no opposition to the grant, which was then

in lease for 21 years, though not a penny of the rent had been paid into the Exchequer for many years preceding.

"But, as I take it, the Lord Lieutenant died before the sealing of the Patent, and Mr. James Hamilton had bought the remainder of the Book, together with that particular to the passing of which I would not condescend, until he promised to pass the moiety to the said Earl for £200 English, whereupon it passed the Seal. I know not whether Mr. Hamilton passed a conveyance thereof to the Earl before his departure hence; but am sure the Earl had it in his possession at the time of his departure, which will appear by the case which was drawn up before the receipt of your letter, and will be sent by Mr. Treasurer, whose despatch will be finished in seven days; and if any direction shall come to me concerning the said fishings, I will forbear to put the contents thereof in execution, as your Lordship requires.

"I am ill-thought-of here by some with Books, for refusing to subscribe to such particulars as they bring, if I find them prejudicial to the King or the Church. It seems I am thought by some too open-handed. For I conceive by your letters that some ill tale hath been told concerning this particular" (S.P.I., 352).

Could anyone conceive that the writer of this letter was a party to three separate acts of vital consequence dealing with the Bann? These he withholds from Cecil, although they extended over three years. It will be convenient to enumerate them: On the 10th April, 1606, Chichester accepted a conveyance from Hamilton of Lough Neagh and the non-tidal Bann. On the 14th May, 1606, he took another conveyance from him of one-half of the "moiety" of the tidal Bann. On the 1st July, 1608, he procured a Patent for his nephew, Bassett, in trust for himself, for the non-tidal Bann and Lough Neagh, with a fourth of the tidal fishing. He was then on the eve of getting "office" found for himself as Hamilton's assignee of the river, as will shortly appear.

Had the Deputy been straightforward with Cecil he would, in a reply affecting to deal with the fisheries, have mentioned the true facts. The grant of the Bann to the Corporation of

London was a settled part of British policy, yet Chichester, with the title to the river in his pocket, pretended he was the victim of some " ill tale " whispered by slanderers, when challenged as to why he allowed even the tidal fishing to be passed to Wakeman for Hamilton's profit and his own.

In mere detail he was untruthful to Cecil. His assertion that the Earl of Devonshire died before Wakeman received the Patent was false. Devonshire's death occurred on the 3rd April, 1606. The grant to Wakeman and its transfer to Hamilton took place a month before Devonshire died. Most disingenuous was it to say Hamilton sold to Hugh O'Neill " the moiety of the Bann " for £200. Hamilton had then no such interest in the river to sell. He had, of course, been granted the tidal river under Wakeman's power-of-attorney in March, 1605-6, but, on the 14th May, 1606, he conveyed half of the " moiety " to Chichester. It may be said that more than a " moiety " still remained to Hamilton. This is not so, because it was owned as to one part by the Bishop of Derry ; and as to a quarter, by Sir Randal MacDonnell, and their claims were vigorously asserted. O'Neill's protest to the King complains that he had to re-purchase " all the fishings of the Bann " ; and Hamilton was merely the Deputy's mask. Indeed he convicts himself as privy to the frauds relating to the issue of the Patents, by alleging that Hamilton " bought the remainder of the book "—the " book " being a warrant for a grant of £100 a year, which had then been satisfied a dozen times over.

That the King was originally left in the dark as to the Deputy's acquisitions may be inferred from his Majesty's Letter of 30th June, 1609, to Chichester, enclosing articles of instruction to the Commissioners for the Plantation :

" You, our Deputy, shall cause our Judges and learned counsel to set down our titles to the several lands lately escheated in Ulster, to see the records to be perfected, and to take care that they be safely preserved and kept secret, and to transmit the cases hither under hands of our Judges and learned counsel. . . . The river fishings in loughs and rivers are to be allotted in the proportions next adjoining to the loughs and rivers wherein the said fishings are—the

one moiety to the proportion lying on the one side of the river or lough, and the other moiety to the proportion lying on the other side, unless by necessity or inconveniency it shall be found fitting to be allotted to the one side—for which fishing some increase of rent is to be allowed unto us as of the Commissioners shall be thought fit. That return be made of their proceedings and doings by virtue of this Commission before Hallowmas next, that we may have convenient time to resolve thereupon this Winter, and to signify our pleasure against the next Spring" (P.R.C.I., 7 Js. I., pt. 1).

Earlier in that year Sir John Davies, who had been in London arranging the details of the contract with the Corporation, returned to Dublin with a letter from James I. dated 29th March, 1609, "commending his services as well in that which concerns the Plantation of Ulster escheated to us, as in redeeming our Customs to our hands and otherwise concerning matters in our Exchequer and revenue there. . . . In regard of his services we have graced him with the dignity of a Sergeant." Then the King orders him to be granted "lands in fee farm to the clear yearly value of £40" (L.M., 73, pt. 2)—a modest reward, considering the prodigality shown to others—if that prodigality had really been the King's.

In several subsequent despatches, Chichester took care to interlard suggestions which would enable him to lay claim to compensation for "surrendering" the fisheries when the Londoners arrived. A letter of 27th October, 1609, contains if possible a larger dose of deception to bewilder the King's advisers than did his excuse to Cecil for granting the tidal Bann *via* Wakeman to Hamilton.

A controversy had arisen as to the disposition of a sum of £200 due to Hugh O'Neill for cattle supplied to the Northern garrisons, which amount had been confiscated by Chichester. "O'Neill yielded freely to deliver beeves to the garrisons near him, and to receive his money in England," wrote the Deputy to Cecil on the 7th April, 1608 (S.P.I., 463). The £200 remained in the hands of the pliant Vice-Treasurer, Carroll, after the flight of the Earl, and, though James I.

never repaid O'Neill his own borrowings, he ordered the £200 to be given Mr. John Manwood (8th July, 1609), who was a grumbling deer-steward at Waltham (L.M.S. 90, p. 10). Chichester objected to this as being an injustice to Hamilton. He really wanted the Earl's money himself, and told a tale of the £200 being earmarked as the price paid by O'Neill for the Bann fishery to Hamilton.

" Has received a letter from the King, dated 8th July, 1609 . . . that, whereas the traitor Tyrone, at the time of his revolt, had £200 or thereabouts, remaining in the hands of James Carroll, his Highness is pleased that one John Manwood, his Majesty's servant, or his assign authorised, shall have a warrant to receive the said £200 of his royal bounty. Before, however, he puts said directions in execution, he makes known the stay of that cause for the reasons ensuing.

" Said Tyrone pretended title to the moiety of the fishing of the Bann ; and he, finding his title not good in law, and hearing that the whole river of the Bann was passed in fee by virtue of the King's Letter to one Wakeman, who was in trust for the late Earl of Devonshire, Tyrone desired him (Chichester) to be a means to the said Earl, that he might have one-half of it for £200, in regard he had some claim to it. Wrote according on his behalf to the Earl of Devonshire, who at that time seemed to be willing, at his entreaty, that Tyrone should have it to buy, before anything was effected.

" After the Earl of Devonshire's death, Wakeman (with the consent of his executors) sold the whole fishing and the rest of Wakeman's grant to James Hamilton, his Majesty's servant, with whom also, at Tyrone's request, Chichester had speech about the same, and who was content that Tyrone should have it. But he moved Mr. Auditor Ware to be a means to the Earl's executors, to yield him some other thing that he demanded in lieu thereof, over and above the money Tyrone was to pay him, and thereupon he (Chichester) gave his word for payment of the money to Mr. Hamilton, according to the agreement that should pass betwixt him and Tyrone, but (as he is informed) Tyrone,

soon after this, delivered beeves to some of the garrisons in Ulster, upon his direction, amounting to more than £200, and he (Chichester) willed Mr. Carroll, then Vice-Treasurer, to pay him the over-plus of the money, and to stay the £200 in his hands, and to deliver it to Mr. Hamilton; which he thought had verily been afterwards performed, and the fishing thereupon made over to the Earl of Tyrone.

"He has now, upon receipt of his Majesty's Letter, in Manwood's behalf, called said Carroll and others before himself and the Council, and said Carroll confesses that the money remains still in his hands, but says further that he ever was, and is, ready to deliver said money to anyone that shall give him a sufficient discharge in law for the same. Mr. Ware also affirms confidently that, to his knowledge, nothing was effected before Tyrone's departure. Yet, notwithstanding, Tyrone, in the absence of Mr. Hamilton, entered upon the moiety of the said fishing, the summer before he fled hence. Whereupon it was found by 'Office' that he was possessed of the same at his departure. So that, if the bargain had been duly performed, the moiety of the fishing thereof had been in the King, and the money should by that means belong to Mr. Hamilton, who being now in England, may be examined concerning the same by such Commissioners there for Ireland as his Lordship shall please appoint. In the meantime, has made stay of the money till his Majesty's pleasure be further signified; for, if the fishing be the King's, then is the money Mr. Hamilton's, and may not be delivered to Mr. Manwood" (S.P.I., 301).

The falsehoods of this document are apparent. The "whole River of the Bann" was not passed under Wakeman's Patent, but only the tidal Bann (below the Salmon Leap at Coleraine). Wakeman was a trustee for the Earl of Devonshire, as appears from the Earl's will made the day previous to his death in 1606, but the untruth that Wakeman sold to Hamilton after Devonshire's death, has already been exposed. The transfer took place a month before, and, therefore, Wakeman did not sell "with the consent of

Devonshire's executors," for the sale occurred in Devonshire's lifetime, as the Deputy was shrewdly aware of.

That O'Neill asked Chichester to intercede with Devonshire to procure a re-conveyance of the Bann is most unlikely. Devonshire's secret trustee, Wakeman, had sold his interest before the Patent issued. One Earl was dead; the other in exile and attainted, so it was safe to say of either "the thing that is not." The truth was, as the dates show, that on the day after the grant to Wakeman all his rights therein were conveyed to Hamilton, under the power-of-attorney held by "Mr. Auditor Ware." Hamilton as we have shown, assigned Lough Neagh, with the non-tidal Bann, to Chichester on the 10th April, 1606 (having received it under Thomas Irelande's Patent of the previous 14th February). He then conveyed half of the "moiety" of the tidal river to Bassett in trust for the Deputy on the 14th May, 1606 (having received the whole under Wakeman's Patent). The remaining "moiety," as has been pointed out, could not be converted to their use, as it was in grant to Sir Randal MacDonnell, or was claimed also in part by Bishop Montgomery. Chichester's effort to retain the £200 for Hamilton discloses merely the design to lay hands on it for himself, and it was doubtless by such devices that O'Neill was mulcted, as to his fishings, in the way of which his petition to the King complains.

In none of the many letters which Chichester wrote Cecil did he venture to mention the fact that he had taken an assignment of the Bann and Lough Neagh from Hamilton, under Thomas Irelande's Patent, as well as a quarter of the tidal Bann under Wakeman's Patent, and stood seized of these under Bassett's Patent and assignment. Yet every inch of the river and of Lough Neagh now belonged to him (on paper) except three-fourths of the tidal Bann. O'Neill's "moiety" (so-called) would not have been a "moiety" of the tidal river, but of half the breadth of the Bann from Lough Neagh to the sea for its entire length of thirty-one miles, in right of riparian ownership (in what is now County Derry). The supposition that the £200 could have been withheld from Hamilton for two years, if it belonged

to him, is unthinkable. Chichester would have secured immediate payment for his ally from his "Sub-Treasurer" Carroll, who would freely do as he was told.

Hamilton, besides, would hardly have been likely to accept payment in a roundabout way for a conveyance of the Bann to O'Neill, and the Earl of Tyrone was hardly the man to "truck" with an underling about his rights. O'Neill had the assistance of lawyers and secretaries, and was quick with his pen, when his Patent was infringed. He nowhere connects Wakeman or Hamilton with his complaints. Nor would Chichester have favoured O'Neill as to the river rather than the clamant O'Cahan. If the £200 story were well-founded, the Deputy's decision in "O'Cahan *v.* O'Neill" would be more unjust even than it appears. Had O'Neill in 1605 paid £200 for the fishing, as Chichester avers, the Deputy should have decided in 1607 that the Bann was the Earl's. Even were his Patent then defective, O'Neill, on Chichester's own admission, held a moiety of the river as assignee of Hamilton.

The "case" drawn up by the Attorney-General in 1607 assured Cecil that neither O'Neill nor O'Cahan had any title to the Bann; yet the Deputy in 1609 asserted that O'Neill was the assignee of a moiety since 1605. In O'Cahan's litigation with O'Neill the fishery was a main issue, but instead of giving judgment for O'Neill (whether as assignee of Hamilton or as Patentee from the Crown), the Deputy sought to lure him to London, to try his rights there, under the shadow of the Tower, after Chichester had himself or by his creature, taken a conveyance of the river.

Some trace of shame should have penetrated the avowal of those who decided that O'Neill possessed no rights in the Bann, when they confess that after his flight, they held "office" in 1608 and found his title good, in order to create an escheat to the King. Such repugnancy may explain the statement that Hamilton sold "the moiety of the Bann" to O'Neill, under the Wakeman Patent. If the Earl accepted a diminution of his rights, and confessed that his only share in the Bann was a tidal tail-end—thereby surrendering thirty-one miles of river—he was reduced to a feebleness hardly

characteristic of the cavalier who once challenged the Marshal of Ulster to meet him in full armour, while he fought only in jerkin and hose.

Although the real facts can now hardly be ascertained, in the absence of many documents, a writing, dated two months later, partially supports Chichester's allegation that Hamilton had a transaction with O'Neill about the Bann. It contradicts him in other ways, but even if collusive, it deserves mention. This is a petition from Alderman Weston, of Dublin, to Cecil, of the 25th March, 1609, which tells the following story: "As security for a debt of £1,200, Tyrone assigned him the fishing of the Bann and the salmon leap in Tyrone [Derry], which he enjoyed for four years. Afterwards the Lord Deputy and Council, having thought fit that the fishing should be restored to Tyrone, it was ordered that Tyrone should give security for the debt with interest at 10 per cent.; but Tyrone, being sent for into England, he had come to Petitioner and told him he had no other security to give, and, therefore, returned to him again the Deed thereof passed to himself by Mr. James Hamilton. Prays that the money may be paid, or the fishing left to him for security" (S.P.I., 199).

This proves that O'Neill, instead of being deprived of the fishing by Devonshire in 1605, was able to mortgage it in that year to Weston, and therefore had good title so to do. Weston's case is that the Deputy ordered it to be given back by him to O'Neill, and that afterwards O'Neill handed him Hamilton's assignment of the river. If so, Weston must have advanced money on it to O'Neill before Hamilton got the Patent, as he asserts he enjoyed the fishery "for four years," *i.e.* since 1605. Ware affirmed that Hamilton gave no assignment.

Weston was a well-known instrument of the Deputy, and lived near Dublin Castle in High Street (I.I.). Manningham's *Diary* (p. 115) has a note: "One Weston, a merchant of Dublin, hath been a great discoverer," *i.e.* of concealed lands (C.S.P.). Weston also took a mortgage on O'Cahan's fishings, and on the Lough Foyle fisheries, which Chichester tried to clutch. Indeed, he alleged himself a mortgagee

of the estates of the three great Ulster chiefs, O'Neill, O'Donnell and O'Cahan, after their flight or imprisonment. Contemporary references to Weston are meagre, but he seems to have combined the callings of shipmaster and money-lender. Thus Sir George Carey speaks of the Queen's victuallers paying Mr. Weston of Dublin £100 for Newland fish in January, 1600-1 (S.P.I.A., 312). On 24th November, 1602, Sir George Carey tells Cecil of a "Dunkerquer" taking a ship belonging to one Weston of Dublin (S.P.I.A., 527). Little more of him is known.

Weston's Petition of 1609 was referred back to Chichester and by him to the Master of the Rolls (Sir A. St. Leger) and Davies, who certified with remarkable celerity :

"April 3rd, 1609 : Find that the right of the fishing remains with Mr. James Hamilton. Find also that a sum, reduced to £1,117 and twenty in-calf cows, was due by the Earl of Tyrone to Nicholas Weston ; and that payment thereof, with interest at 10 per cent. and security for said payment, was ordered to be made by the Earl ; but that no such payment was made, and no security given to Mr. Weston. Recommend, therefore, in consideration of the loyal services rendered by the said Weston in the late Rebellion, that his Majesty may be moved to direct that payment of the above debt, with interest, and of such further sum as may be proved to be due, may be made to Nicholas Weston out of the rents and profits of the escheated lands, until the said lands shall be allotted to Undertakers upon the new Plantation" (S.P.I., 200).

If Hamilton assigned the Bann to O'Neill, and O'Neill handed the conveyance to Weston, it seems odd that the Attorney-General should find "the right of fishing remains with Mr. Hamilton," especially when the £200 to be paid by O'Neill, had been so carefully impounded by the Deputy for Hamilton out of the Earl's beeve-money.

The "finding" simply meant that the King was to provide for the discharge of O'Neill's debt to Weston, because Chichester's officials in their master's interest, unlawfully disallowed the security held by the "great discoverer." The Deputy was arranging, with the help of Sir John Davies

and the Master of the Rolls, for the Bann to fall to himself unclogged by incumbrance. Weston's statement that O'Neill assigned him the fishery and handed him whatever title-deed Hamilton had furnished to the Earl was not denied. His claim, in that case, was legally unanswerable. Yet Hamilton, who had no right whatever to the river after he had assigned it to O'Neill, was declared by the law officers its true owner. As the result, Hamilton was handsomely compensated for surrendering part of it to the Londoners a year later (as will shortly appear), and Chichester shared in the profit.

Davies' "finding" against Weston's title was the less excusable, because his mortgage in other respects was officially recognised. After the Earl's flight, Sir Toby Caulfield (ancestor of Lord Charlemont) was appointed Receiver over Tyrone, and furnished an account of the outgoings and income of O'Neill's estate for three and a half years, to the 1st November, 1610. This sets forth that certain stock belonging to O'Neill was "by the Lord Deputy's warrant" delivered to Weston, viz.: "twelve cows, two stud mares, and one working mare" (S.P.I., 535). Thus a mortgage, held inoperative as to real estate, was treated as valid in respect of chattels by the discriminating Attorney General.

Add to this that at the Derry Inquisition, taken on the 1st September, 1609, before Chichester and Davies, the jury found that Weston had then been four years in possession of certain fishings under a conveyance from O'Cahan (C.V., clxxi.), thus confirming the note inscribed on Docwra's treaty of 1602. Weston was therefore dissatisfied at the "finding" against him as to O'Neill's mortgage, and must have shown himself insistent in demanding justice. To compose the mind of an inconvenient suitor, means were deftly taken. On the 26th May, 1610, the Clerk to the Dublin Privy Council, Master Fox, tells Cecil:

"The young Prince [Henry, eldest son of James I.] has been of late much wronged by one Weston, of this city, and others . . . in spreading abroad that his Highness kept a daughter of the late Earl of Essex, etc., which being made known to the Lord Deputy, he sent for the said Weston . . .

and Weston, being the principal party, cannot as yet be found. Doubts not that he and the rest will repent meddling with this matter, such will be the punishment that is like to be inflicted on them " (S.P.I., 435).

The Deputy—generally so ready with the pen—left the correspondence on this delicate subject to his scribe. Fox, however, could be trusted, having previously been commended to London by Chichester (12th October, 1608) " for a town of his called Moyvore " (S.P.I., 53).

Weston, after such a proof of official earnestness, gave no further trouble. Later on he figures as in receipt of a cash compensation from Hamilton out of the sums paid to " the Scot " for the surrender of the Bann and Lough Foyle. The documents will shortly be cited.

Weston's services were tardily recognised, but such recognition establishes that he was the real owner of the fisheries after O'Neill's flight, notwithstanding Davies' decision in Hamilton's (*i.e.* Chichester's) favour. For by King's Letter (1st March, 1612) it was declared that " Nicholas Weston, Alderman of Dublin, having sustained many and great losses in the late reign of Queen Elizabeth, as well by shipwreck and the loss of divers ships employed in her service, as also by the decrying of copper money then current in Ireland . . . is appointed farmer and receiver of all issues and amerciaments of all jurors . . . by lease for 21 years, at £100 a year . . . and as he was possessed of divers lands and fishings in the Counties of Donegal and Coleraine [Derry], to the value of £500 a year, which are now disposed of by the King unto the Londoners . . . he shall have lands in fee farm not now in charge, to the value of 100 marks English, and a lease for 21 years of a moiety of all such concealed lands as he shall discover not exceeding £50 per annum " (S.P.I., 251).

There is also indirect evidence of the falsity of Chichester's allegation that O'Neill was left in possession of his fishings on paying £200. On the 11th April, 1608, the Deputy informed the Privy Council that the Archbishop of Cashel, Miler Magrath (who had joined the State religion in Elizabeth's reign), was indicted for saying that : " O'Neill was

greatly wronged when he was dispossessed of the fishings of the River Bann ; and that he had a better right unto them than any English or Scottish ; yea, that he had a better right to the Crown of Ireland than any Englishman or Scotchman whatsoever " (S.P.I., 468).

Miler denied these words, but was convicted, and Chichester recommended some punishment, which James I. did not sanction (S.P.I.A., 655). Now if O'Neill were in possession of the fishings at the time of his flight, why should a Protestant Archbishop have been prosecuted for saying the contrary ? The Deputy knew that Miler Magrath had reason to be grateful to the Earl, for, when his brother's troops made the ex-monk a prisoner during the Rebellion in 1599, O'Neill severely reproved his captors, and commanded his release (Mn. and S.P.I.A., 612). Chichester juggles with dates in order to shift the confiscation of the fishery to an earlier period, and alleges that the " prosecution of Miler took place about the time of his (own) arrival here out of England."

The attempt to involve Devonshire in the wrong done to O'Neill by the grant of the tidal Bann to Wakeman, deceived the Earl of Tyrone himself, as after Devonshire's death he blames him for confiscating the fisheries. The fact was that Devonshire's mysterious trustee, John Wakeman, only held the Bann for a single day, and his name was used as a mere blind. Devonshire, in 1603, had refused to sanction a Patent of territory embracing the Bann to O'Cahan (although promised by Docwra), because of the treaty at Mellifont guaranteeing it to O'Neill. Chichester's suggestion that Devonshire went poaching on it in 1605 by proxy, was therefore a cruel wrong to the memory of an old commander and a departed friend.

Devonshire, when Viceroy, was responsible for the grant of O'Neill's Patent. His policy, however severe in war, was, as to peace conditions, statesmanlike, and had been declared a month before the close of O'Neill's rebellion, in a letter to Elizabeth's Council of State, dated 26th February, 1602-3. It was the direct opposite to that carried out by Chichester. Devonshire recommended :

" I think it would as much avail the speedy settling of this country as anything, that it would please her Majesty to deal liberally with the Irish lords of countries, and such as are now of great reputation amongst them, in the distribution of such lands as they have formerly possessed, or the State here can make little use of for her Majesty. If they continue as they ought to do, and yield the Queen as much commodity as she may otherwise expect, she hath made a good purchase of such subjects for such land " (M.L.).

Hugh O'Neill was therefore tricked by the Deputy when he was led to believe, after Devonshire's death, that the late Lord Lieutenant, and not Chichester, was the author of the injustice towards himself. The lease of the Bann to Sir William Godolphin in 1600, during the Rebellion, was doubtless craftily harped upon to convince O'Neill by analogy, that the late Viceroy was responsible for the subsequent Patent of the river to Wakeman in 1605. For in his Remonstrance to King James after his flight, the Earl writes : " By the procurement of the Earl of Devonshire, Lord Lt. of Ireland, there was taken from him 2 parcels of land called the Fews . . . and all the fishings of the Bann . . . which the Earl, to avoid the trouble of the law, *was forced to purchase again at the new, as though he had never before any title thereto.*" Devonshire had left for England long before the river was granted either to Wakeman or Irelande, and there is no trustworthy evidence beyond what flowed from Chichester's assertions, that the absent Lord Lieutenant was privy to the deprivations O'Neill complained of.

No " moot " during Devonshire's lifetime was allowed to be raised as to O'Neill's Patent being defective. " Office " had been found in June, 1588, to show that the Patent included O'Cahan's Country ; and the " return " was lodged in the Exchequer by O'Neill in person, and received from his hands with solemnity by the Judges (S.P.I., 520). This Patent was restored to O'Neill, subsequent to his rebellion, by Devonshire, after further inquiry. Chichester knew that Cecil was one of the " overseers " of Devonshire's will (with the Earls of Southampton and Suffolk). Under it,

" my loving friends " Sir Wm. Godolphin, J. Earth, and " my servant John Wakeman, Esq." were executors. Chichester's misrepresentations touched a tender chord, because Cecil, as " overseer," would regard himself as responsible for carrying out the will. It declares that Wakeman had " upon my trust and confidence, a warrant from the King's Majesty for the passing to him and his heirs of manors, lands, etc., of his Majesty's in Ireland, of the clear yearly value of £100, of which sum a good part is already granted by his Majesty to him and his heirs, and the residue is to be passed."

Devonshire, at the point of death, reveals the truth as to the King's Letter to Wakeman, which alleged that the grant was a reward to him for " some services done the King, as of a sum of money to be paid, by the King's orders, to an old and well-deserving servant in Scotland." The secret trust with Wakeman was doubtless created because Devonshire, being Lord Lieutenant, could not take lands in Ireland without special licence from the King.

In his own name, however, he received many English grants. In June, 1603, he was given land in England worth £400 a year. In February, 1604, he received a manor. In February, 1605, he got a manor and parsonage in Leicestershire. In July, 1605, he received part of the lands of Lord Cobham. He was also given a lease of the tax on French and Rhenish wines (C.S.P. Dom.). But that he should slily acquire through a trustee, a grant of the tidal Bann, then under lease to his friend Godolphin, who did not think it worth paying the rent of £10 a year for, is beyond belief.

Chichester's allegations were probably emboldened, not only by reason of Devonshire's death, but because of the fact that he was in possession of a letter from the Privy Council (30th April, 1606) which, in announcing his demise, avowed : " The greatest part of your directions have come from him, of whose experience and merit in that Kingdom his Majesty and we did attribute so much, as we forebore in most particulars to intermeddle " (D.C.H., 475).

On first receiving the perplexing news that his patron was no more, Chichester felt anxious for the safety of his correspondence, and on the 25th April, 1606, he wrote

Cecil : " The woeful news of the death of the Earl of Devonshire arrived. My affection towards him was very great and firm. From his first entrance into this office, I have ever transmitted the intelligence and state of this kingdom unto him, with such observations as I thought meet for the present and future government. Heartily wishes that all my papers were in Salisbury's hands, for to the rest of that Council I am almost a mere stranger " (S.P.I., 459).

Even when Chichester, writhing under Cecil's reprimands in 1608, first threw the blame on the late Lord Lieutenant for the issue of the Bann Patent to Wakeman, he never stated he could produce any of the dead man's letters to bear out this story.

The plea against Devonshire may finally be disposed of by the fact that while Wakeman's grant only related to the tideway, Chichester himself seized thirty miles of the non-tidal Bann with the whole of Lough Neagh, under Thomas Irelande's patent. The absence of blame from Cecil as to this grant, which, if he had known of it, should have formed his main ground of complaint, proves that he was unaware of the full measure of the Deputy's misconduct.

The " Sub-Treasurer " James Carroll, mentioned as retaining Hugh O'Neill's £200, had been previously commended by Chichester. He was engaged in frequent land speculations with Hamilton. Originally appointed Chief Chamberlain in Ireland under Queen Elizabeth on 25th March, 1597, he became Vice-Treasurer, and was made Chief Remembrancer in 1609, which post he held until 30th September, 1625. Carroll was Lord Mayor of the " close " Corporation of Dublin, 1610-12 (D.C.H. and C. MS., 1611, p. 179 ; L.N., 52, pt. 2), and was knighted by Chichester. On the 1st May, 1612, the Deputy gave him a letter of introduction to the Lord High Treasurer of England, the terms of which prove their close relations. Chichester wrote that Sir James Carroll was going over to answer Lady Brumwarder's complaint, and added : " Some taxations have been laid to his charge there, besides that at the lady's part, which have alienated your lordship's good conceit of him. . . . I have

found him very sufficient and honest. . . . I commit your lordship to God's holy preservation " (T.C.D. MS.).

Evidence of the manner in which Carroll and Hamilton were knitted up with Chichester's other land traffickers is forthcoming in a Trust Conveyance executed by Hamilton shortly after his assignments to the Deputy of the proceeds of the Wakeman and Thomas Irelande Patents. On the 4th July, 1606, James Hamilton, of Bangor, Co. Down, executed a Declaration of Trust by which the whole of his manors, lands, and other hereditaments whatsoever in Ireland were vested in John King, James Ware, James Carroll, William Parsons, and Turlough O'Reilly, of Dublin, to hold to his own use, with power to redeem during his lifetime on payment of twelve pence. (The *Calendar* of Patents misprints 12 pence as " 12 pounds," and misdescribes the Deed as a " Mortgage.")

The English " Statute of Uses," directed at secret conveyances, had not then been applied to Ireland. This Deed was not enrolled until 21st December, 1615—three weeks after Chichester was removed from the Deputyship. Three of the trustees, Ware, Carroll and Parsons, were officials of Dublin Castle; and were honoured with knighthoods for abetting Chichester's methods. In 1609 Carroll and Hamilton were brought into legal relation with Wakeman, by a Deed which also they did not venture to enrol until Chichester's dismissal from the Deputyship. This transaction (which was impugned subsequently on the Wakeman Patents being condemned by the Barons of the Exchequer as fraudulent) is witnessed by a belated enrolment of 1615. It had been executed on the 5th December, 1609, and thereby John Wakeman, Esq., Sir James Carroll, of Dublin, and Sir James Hamilton, of London, sold and conveyed to Sir Thomas Roper, of Castle Maine, Kerry, the castle and lands of Castle M'Aulie, the castle and lands of Carrig-a-Cashel, parcel of the estate of Melaglin MacDermot M'Aulie [MacAuliffe] attainted (C.P.R. James I.).

Hamilton then had been summoned to London, and the enrolments were made by his brother John, who did his legal work in Dublin, and from whom a letter concerning

Carroll will afterwards be quoted. The commercial side of the confiscations, and the close and continuous business relations between Chichester and Hamilton in carrying them out, are corroborated by other of their jobbings in land. Thus on 1st May, 1612, the escheat of MacCarthy's country of Carbury, Co. Cork, was discussed by the Deputy in a letter to Sir James Semple :

" I am now informed by Sir James Hamilton that you have lately found some impediment there in obtaining a new reviving Letter from his Majesty. . . . The inhabitants are supposed to be badly affected, and their titles weak. . . . Now, if the King's better title may be proved, and by 'office' found, . . . I can very well allow of the course intended."

Again, on 31st December, 1613, Chichester wrote to the Privy Council of intended confiscations in Co. Longford :

" We have been informed by his Majesty's solicitor [Jacob] and by Sir James Hamilton, that his Majesty has granted to Sir James Semple, Sir James Crichton, and Sir James Hamilton, an annuity of £250 a year during their lives, to be paid out of the Exchequer of England, in consideration of their surrendering their interest as assignees of money due to Sir Charles Manners and Lady Sydley " (T.C.D. MS.).

State " policy " and religious zeal were the masks behind which the despoilment of the ancient owners was plotted in the King's name by the wielders of Executive power, for their own profit.

CHAPTER XVII.

THE ULSTER PROSPECTUS.

After his success in hoodwinking Cecil and uttering Patents to himself, the Deputy's next move to clinch his possession of the Bann, was bolder and more public. Bassett's Patent had been issued without any prior finding of "office," just as the Antrim Inquisition alone can be cited to justify the conveyances to Hamilton, under either the Wakeman or Irelande Letters. The legal infirmity of the Deputy's title doubtless caused him uneasiness, in view of the certainty that a grant of the Bann would be made by King James to the City of London. Davies had been twice to England to arrange the legal details of the Plantation. He wrote (28th August, 1609) that the Merchants' Deputation to Ulster "liked and praised the country very much, especially the Bann and River of Lough Foyle" (S.P.I., 280). His first visit to London lasted from October, 1608, to May, 1609; the second from July, 1610, to February, 1610-11.

On the 25th May, 1609, the King, in a sort of prospectus, issued in the shape of "motives and reasons" to induce the City of London to undertake the Plantation of the North of Ireland, wrote: "His Majesty would be pleased to buy from the possessors of the salmon fishing of the Rivers Bann and Lough Foyle, and, out of his personal bounty, bestow the same upon the towns of Derry and Coleraine for their better encouragement, which some years proved very plentiful and profitable. . . . Lastly, the Admiralty of the Coast of Tyrconnell and Coleraine now, as is supposed, in the Lord Deputy by the Lord Admiral's

grant may be by his Majesty's means transferred unto them for the like term of 21 years " (M., 618).

Chichester was thus not suggested as being the owner of a fishery. Later on the Lords of the Council advised him on 3rd August, 1609 :

" It is not unknown unto your lordship how much his Majesty doth affect, and how ready he is to entertain all occasions that are offered to further the Plantation of Ulster, to which work the City of London being of late incited, and a project made of the situation and commodities of the place, and what courses were most fit to be held in the proceeding, and for the performing of such a business they have showed themselves both willing to accept it, and desirous that they may undertake such a part as might be fitting for the honour of the City, and a means to reduce that savage and rebellious people to civility, peace, religion and obedience. For which purpose the bearers hereof, John Brode, goldsmith ; John Monnesley, Robert Treswell, painter-stainer ; and John Rowley, draper, being appointed deputies for the City of London, to take a view of the country, and to make report at their return what they find, that then they may go forward into their intended Plantation. These are, therefore, to pray and require your lordship, so soon as you hear of their arrival, to be careful to give order that they may be supplied with all necessaries as they travel in the countries ; and in all things wherein they shall have occasion to use your lordship's favour to give them your countenance and best assistance ; and we have required Sir Thomas Phillips to accompany them, whose knowledge and residence in those parts, and good affection to the cause in general, we assure ourselves will be of very good use at this time, seeing there is no man that intendeth any Plantation or habitation in Ulster which ought not to be most desirous of such neighbours as will bring trade and traffic into the ports " (S.P.I., 266).

Chichester had his plans laid before this message arrived. He and the Attorney-General faced many difficult problems in their official partnership ; but the new situation was more trying than any they had encountered. Some legal

recognition of his title to the Bann was essential before the Londoners arrived with their grant in a strong-box. The resourcefulness of Davies did not forsake him, and at all costs he determined that "office" must be found which would establish a title in the Deputy for the river. There was no Commission to hold an Inquisition into the ownership of the Bann, but a makeshift was hit upon. Bishop Montgomery, on the 2nd May, 1606, had obtained a King's Letter granting a Commission (should the Bishop require it) to ascertain the See lands of his three bishoprics. He claimed certain river fishings, as to which investigation was necessary, so it would be a pleasant summer excursion to visit Ulster, gratify his Lordship, and thwart the designs of a Scotch King and an English Corporation to deprive an Irish Deputy of his hard-earned Bann.

One obstacle existed to this project, which to ordinary minds might seem fatal—the words of the King's Letter did not sanction it. That, however, was deftly overcome. The Deputy, on the 21st July, 1609, "annexed" (to use his own word) to his Majesty's Commission "certain articles of instruction, under the Great Seal of Ireland, to distinguish Church lands from the lands belonging to the Crown within the said County of Coleraine" (Derry); and, above all, to "inquire of divers things contained in the said Commission and articles of instruction." The Great Seal was a great weapon. Unfortunately, the "articles of instruction," thus illegally grafted on the King's Commission, are not preserved (C.V., clviii.).

In the summer of 1609 the Deputy and his Attorney-General made a progress into Ulster, and, as a result, the King's plans for the grant of the Bann to the Londoners were handsomely forestalled. Officially both Chichester and Davies knew that a main enticement, held out by James I. to the City, was the grant of the Bann. Nevertheless, at the earliest convenient opportunity after the Attorney-General's arrival from London, he and the Deputy hastened North to annex the river and thwart the plan of the Crown. Such was their zeal for the Plantation.

We find them in the Castle of Limavady, on the

30th August, 1609, with the Chief Justice, the Treasurer at War, and the Surveyor-General. There, in the stronghold of their prisoner O'Cahan, they decided to hold " office " and there they declared the Deputy's title to the Bann.

The verdict is recorded at the fag-end of long and numerous ecclesiastical findings in the interest of Bishop Montgomery. These occupy eight pages of print in the *Concise View of the Irish Society*, and their legal value may be estimated from one which immediately proceeds the finding in Chichester's favour :

" The said jurors do, upon their oaths, find and say that Donnell MacHugh O'Neill, King of Ireland, did, long before any Bishops were made in the same kingdom of Ireland, give unto certain holy men, who they (sic) called ' sancti patres,' several portions of land, and the third part of all the tithes ; to the end they should say prayers, and bear a third part of the charge for repairing and maintaining the parish church. . . . And that afterwards the said holy men did give unto several Septs several proportions of said lands for ever . . . according to the course of Tanistry free from all exactions ; and, that for that cause, the land was called Termon, or free ; and the tenants thereof some since were called Corbe, and some since Herenagh . . . and so continued free . . . until the Church of Rome established Bishops in this Kingdom."

The jurors whose ecclesiastical lore went back a thousand years then pronounced on the title to the Bann :

" Lastly, the said jurors do upon their oaths find and present that the said King's Majesty that now is, being seized in his demesne as of fee of and in the whole of the fishings of the River of the Bann above the Salmon Leap, and of and in the whole grounds, earth and soyle of the said river, did by his Letters Patent, under the Great Seal of Ireland, bearing date . . . (blank) . . . give and grant the said fishing, with the said ground, earth and soyle thereof, unto James Hamilton, Assignee of Thomas Irelande, and to his heirs forever, as by the said Letters Patent appeareth ; by force whereof the said James Hamilton was thereof seized in his demesne as of fee ; and being so seized did, by his

deed under his hand and seal, duly executed, assign and convey all that the said fishing, with the said ground, soyle and earth thereof, and all his, the said James his estate and interest therein, unto the Right Hon. Sir Arthur Chichester, Knight, Lord Deputy General of the Realm of Ireland, and to his heirs forever, as by the said conveyance more at large appeareth ; by force whereof the said Sir Arthur Chichester, Knight, is now thereof seized in his demesne as of fee ; for further certainty of all which matter, the jurors do refer themselves to the Letters Patents and conveyance above mentioned." This was signed by :

ARTHUR CHICHESTER (Lord Deputy).
H. ARMACHAN (Archbishop of Armagh).
Geo. DERRIEN (Bishop of Derry).
T. RIDGEWAY (Vice-Treasurer).
H. WINCH (Chief Justice).
J. DAVYS (Attorney-General).
W. PARSONS (Surveyor-General).

There was, of course, no jurisdiction to hold an Inquisition in Co. Derry for the entire Bann, half of which is in Co. Antrim. The river flows through the counties of Antrim and Derry for thirty-one miles, from Lough Neagh to the sea. The entire proceeding was a usurpation.

The extension of the " office " to include the river was a defiance of the King's wishes, and it was held without his knowledge or consent. To defeat the Londoners the Deputy invaded the Royal prerogative, and ignored the King's Commission, while he also sat as a Judge in his own cause. The finding ignores the Bassett Patent (which was an essential link in his title), because to have mentioned it would have published to the world the grant made under cover to his nephew of Lough Neagh and of the " fourth " of the tidal Bann. The omission to record the Deputy's claim to the tideway, shows that he had then made up his mind to try to make a bargain with the Londoners concerning the tidal fishery. Every point was cunningly foreseen.

Chichester and his Commissioners sat in the City of Derry two days later (1st September, 1609), and the Deputy, who

did not hesitate to adjudicate in Limavady, where his own interests were concerned, professed great squeamishness at the participation of Bishop Montgomery, as an interested party, in the Inquisitions. His scruples find vent in a letter to the Privy Council, dated 18th September, 1609 :—

"We have now, with much labour and some difficulty, gone through with the survey and other business in the Counties of Armagh, Tyrone, Coleraine, the County of the City of Derry, and Donegal, and are already entered into the like for the County of Fermanagh. In the first two Counties we had the company and assistance of the Lord Chancellor and Lord Primate of Armagh, when, the Lord Chancellor growing sickly and very weak, we with much ado persuaded his return, sore against his will, in the County of Coleraine. Soon after the Chancellor's departure, the Lord Bishop of Derry overtook us, who was as well a party as a Commissioner in the lands sought under the title of ecclesiastical or Church lands. Ever since that time so we have done nothing in that kind without the presence and test of two Prelates of the Church ; and if this survey and inquiry help them not, it is apparent that we did but our duty in the last, and that some of them sought that of right which they must have of grace, if they profess it at all, which I wish they may, according to the King's good pleasure. But I cannot so digress from the duty and service I owe my Sovereign as to feed the insatiable humours of craving men, when they tend to his Majesty's loss or dishonour, thereby to preserve myself from their envy and complaints. . . .

"Sir Thomas Phillips, with the four agents of London, came unto us likewise in the County of Coleraine, a day or two before the Bishop. They landed at Knockfergus, and in their way from thence they beheld Coleraine and the River of the Bann, beneath the Leap. . . . They assure me the City of London will really undertake the Plantation upon the report they are to make, and that with expedition ; if they should not, as I have often told them, they shall be enemies to themselves, for the fishings, lands and

woods, with toleration of customs and other privileges, which his Majesty hath graciously preferred unto them, is not less worth than £2,000 a year, as now it is, which their purse and industry will within two or three years improve to double that value" (S.P.I., 285).

Another letter from him of the same date makes clear that the delegates of the London Corporation surveyed the non-tidal Bann "beyond Coleraine," as well as "the river beneath the Leap," regarding both as part of the estate which they expected would become theirs by Royal grant. Chichester wrote:

"The Commissioners for the City of London have seen and well considered of all that which his Majesty hath been pleased to bestow upon that Corporation, to plant and improve the same. . . . They are gone in circuit to see the rest of the River of the Bann beyond Coleraine, with the great woods of Glanconcane and Killetragh, in Tyrone. . . . Upon my return back towards Dublin, they have appointed to meet me, to take their despatch again to your lordships."

It was the author of the moral essay on "the insatiable humours of craving men" and on "the duty and service I owe to my Sovereign," who three weeks before deliberately cheated James I. and the Londoners out of the ownership of the Bann; and did so while acting "as well a party as a Commissioner." On the 15th October, 1608, the same moralist penned the following boast to the King:

. . . "The justice of the land, which I may well say, in behalf of your Majesty's principal officers here, and without being thought a praiser of myself, was never distributed with more clean hands in this Kingdom" (S.P.I., 82).

The man who thus purloined the Bann and had secretly taken parchment for Lough Neagh, delivered certain "considerations touching the Plantation" to Mr. Treasurer, on the previous 27th January, 1608-9, for the edification of the Castle officials:

"Before all things, the King's title to be cleared, which will be done upon sight of the cases which are to be examined

and weighed by the Judges, and their opinion confirmed in Parliament held here (if thought requisite), and, in the meantime, no claim or plea to be admitted in any Court for any lands which the Judges shall lay down to be the King's upon sight of the cases " (S.P.I., 355).

In those days Dublin was more remote from London than it is now from New York in point of communication, and Chichester had to fear no close watchfulness over his acts. The censures of Irish critics were treated at Court as tributes to his efficiency.

CHAPTER XVIII.

"LIKE THE LONDON WOMEN."

In order to induce the Londoners to close the Ulster bargain, James I., who had become aware of the grant of the tidal Bann to Wakeman, and was told it was a gift for the benefit of the late Earl of Devonshire, made a fresh promise to the City. To overcome the blots on the title, and knowing nothing of the misappropriation of the rest of the Bann or of Lough Neagh, the King, as we have shown, declared: "His Majesty would be pleased to buy from the possessors the salmon-fishing of the River Bann and Lough Foyle." He also promised that he would bestow the same upon the towns of Coleraine and Derry, for the Londoners' benefit, and added that the timber from the Derry woods "may easily be brought to the sea by Lough Neagh and the River Bann" (M. 618, 623).

Instead of the Royal pledge being observed, the Corporation of London were forced to pay exorbitantly for the small portion of the tidal river of which they obtained possession.

Cecil was not entirely deceived by the Deputy's hypocrisies, and may have scented the interest he had acquired under stealthy Patents and assignments. When on 3rd August, 1609, the Privy Council advised Chichester that they were sending over four agents from the City of London, they added: "If there be anything in the project, whether it be the fishing, the Admiralty, or any other particular which may serve for a motive to induce them, although his lordship (Sir Arthur) or any other have interest therein, yet he should make no doubt but his Majesty will have such consideration thereof that no man shall be a loser in that which

he shall part with for the furtherance of this service. As for his lordship, he cannot, besides his general duty, but be glad in his own particular to have such good neighbours to his plantation " (S.P.I., 266-8; P.P., vol. iii. 417-421).

The final arrangements for the coming of the Londoners were perfected towards the close of 1609, and in a letter of 13th October, 1609, Chichester replies to Cecil on the basis that the entire Bann was to be their property:

" The agents of London have seen and observed whatsoever may make for pleasure, profit and advantage, within the limits assigned unto them, and do return full freighted, with desire and reasons to draw on a speedy Plantation. Sure I am they have all things found here better than they expected. Sir Thomas Phillips hath been an host, a guide and a watchman for them in all their travels, which hath been as well a charge as a trouble unto him, which, added to his former services, doth deserve such recompense as your lordship is accustomed to procure for those that bring so good testimony with them.

" If the Londoners go through with the two cities, they must needs have the lands in which he [Phillips] is interested, in and near the Derry, and other things about Coleraine, which are now beneficial unto him; and what to ask in lieu thereof, without diving into his Majesty's coffers, which I have advised him to forbear, he knows not; in respect those agents aim at all those places of profit and pleasure which lie upon the Rivers of the Bann and Lough Foyle.

" But I pray God they prove not like the London women, which long to-day and loathe to-morrow " (S.P.I., 297).

On the 13th December, 1609, the Common Council of London met to hear the report of their four agents, and amongst the conditions they put forward for the undertaking of the Plantation were grants of:

" The salmon fishing of the Bann and Lough Foyle.

" Admiralty of the coast of Tyrconnell and Coleraine [Donegal and Derry].

" For settling and securing all things necessary touching this Plantation, an Act of Parliament here, and the like in Ireland, to pass."

Sir Thomas Phillips' "project for the Plantation" in 1609 estimates the main salmon fishing of Lough Foyle and the Bann at "£800 or £1,000 per annum, which by vending it in foreign countries will rise to a far greater sum" (S.P.I., 227).

On the 28th January, 1609-10, James I. signed solemn Articles of Agreement (by his Privy Council) with the Mayor and Commonalty of London, conveying to that body in perpetuity the salmon and eel fishing of the entire Bann, from Lough Neagh to the sea, and the fishery of Lough Foyle, which embraced that of Culmore (S.P.I., 136, 359). The 14th Article provides :

"The salmon and eel fishing of the Bann and Loughfoile, and all other kinds of fishing in the River of Loughfoile so far as the river floweth, and in the Bann to Lough Eaghe, shall be in perpetuity to the City."

The 17th Article is :

"The City shall have the like liberty of fishing and fowling upon all that coast as other subjects have ; and it shall be lawful for them to draw their nets, and pack their fish upon any part of that coast that they fish upon, and carry the same away ; and they have the several fishing and fowling in the City of Derry, the town and County of Coleraine [Derry] and all the lands to be undertaken by them ; and in the River of Loughfoile so far as it floweth, and of the River of Bann unto Lough Eaghe" (C. MS., 37).

This contract makes no exception in favour of anyone as to Bann fishing rights, but the Patent which followed upon it in 1613 reserved an undefined portion of the tidal fishery to the Bishop of Derry.

On the 4th February, 1609-10, Cecil advised Chichester of the completion of the arrangement :

"Your lordship shall understand that the noble and worthy work of the Plantation in Ulster, undertaken by the City, is now at the last resolved on ; and articles of agreement between his Majesty and the City absolutely concluded, to which we and they have already subscribed. . . . All which, and every of them, we do not only earnestly recommend to your lordship's favour, but more particularly and more especially the work itself, being so honourable in the

beginning, and so hopeful in the success, as we must say unto your lordship, there are not very many things within his Majesty's kingdom that he more taketh to heart than this. . . ." (S.P.I., 378).

Chichester acknowledged these commands on the 28th February, 1609-10 :

" I have lately received your letter of the 4th instant, by which I understand that the noble and worthy work of the Plantation in Ulster, undertaken by the City of London, is now at last concluded, and articles of agreement between the King and them mutually subscribed unto. I do very much rejoice therein, as being a matter of so great utility and consequence to the public ; and I will not fail, God willing, as your lordships do enjoin me, to further and advance it to the uttermost of my power and duty."

Thus there was no room left for misunderstanding on the Deputy's part as to the King's intentions.

The effect of the Patent of the Bann to Wakeman on the treaty with the Corporation turned legal minds to discover flaws in the grant. If it could be annulled, so much the easier would the Royal bargain with the City become. Of the Patent of the non-tidal river and Lough Neagh to Mr. Thomas Irelande, the Government were still kept ignorant. All they were allowed to know from Dublin was that the tidal fishing had been patented to Wakeman, and no more. Evidently the eye of Chief Justice Winch first pierced the fraud connected with this grant. On the 18th February, 1609-10, he wrote warningly to Cecil : " Has sent a copy of the declaration drawn out concerning the King's title as to the escheated land in Ulster. Has set down some exceptions in Wakeman's Patent of the fishing of the Bann, which was not set down at first, but has since been added. Mr. Attorney brings a true copy of Wakeman's grant, and the Letters which should warrant the Patent " (S.P.I., 389). Sir John Davies was then in London, and could, an if he would, explain matters clearly to the advisers of James I., but " Mr. Attorney " held his peace. An attempt was then made to get Winch out of the way. For some time he held his ground, but at last succumbed.

" Little Winch of Lincoln's Inn " was sent to Dublin as a Baron of the Exchequer in November, 1606, and was promoted to be the Chief Justice in January, 1608-9. Chichester, in December, 1608, described him to Cecil as " a learned and upright gentleman." Winch accompanied the Deputy and Davies on their Northern Circuit in 1609, and signed numerous Inquisitions then taken, including that at Limavady. A letter of the 10th October, 1610, to Cecil, shows him busily and confidentially engaged : " The Lord Deputy has committed to me the charge of business to be propounded in the intended Parliament here, . . . but, the propositions being many and of great moment, it cannot well be before Candlemas " (S.P.I., 515). Four days afterwards (14th October, 1610), Chichester tells Cecil : " Sir H. Winch, C.J., intending to return to England at Candlemas next, I am to advertise your lordship in the meantime to think of a person to be his successor." Then follows a significant hint : " As the Judges of late have all come from Lincoln's Inn, which grew (as I conceive) from the recommendation which the predecessor gave to his friend, whom he wished to succeed him, I suggest for your lordship's consideration whether some selections should be made from the other Inns " (S.P.I., 516).

The Deputy wanted no acquaintance or friend of Winch's to succeed to his post, lest the newcomer might learn too much of what was going on in Dublin. Winch, however, was not so easily disposed of. He did not leave for more than a year (7th November, 1611).

Winch was too frank a man for a post under Chichester, so he wrote to Cecil that the " Irish air " did not agree with him, and retired to England, where he became a Judge of the Common Pleas in 1611. His successor, Sir John Denham (who had come to Ireland in 1609 as Chief Baron) also hailed from Lincoln's Inn (S.P.I., 201-299).

It is evident that the exceptions taken by Winch to the legality of the Wakeman grant, were not allowed to be pressed. Too many powerful men were concerned in the transaction. Besides, the London Corporation were rich and could afford to be bled. So, early in 1610, Hamilton was

put forward as a catspaw for the Deputy to blackmail them, and heavily were they mulcted. James I. solemnly guaranteed that they should have the fisheries of the Bann and Lough Foyle free, and that he himself would bear the expense of removing any claims against the title, but the price demanded by the extortionists was so big that the King compelled the City to pay half the ransom.

Hamilton had been certified by the Attorney-General to have no legal right to Lough Foyle, and though a fourth of his effective interest in the tidal Bann had been assigned to Chichester, and the rest was disputed by Sir Randal MacDonnell, by Ald. Weston, and the Bishop of Derry, he lodged, and triumphantly carried, a huge Bill for "compensation" against the citizens of London. He demanded £4,760 for yielding up the fisheries. This he figured out at £2,260 for the Bann and £2,500 for Lough Foyle, which, he argued, was only six years' purchase of a yearly rent of £800. His claim was thus formulated to the disinterested Deputy :

"A Note of the monies disbursed by me and my partners for our estates in the main fishing of the Rivers of Lough Foyle and the Bann, which are now to be surrendered to his Majesty.

"LOUGH FOYLE.

"For the redemption of the mortgage of Tyrconnell to the said fishings and for the purchase of Mr. Weston's lease thereof for years, and for the mortgage and for the purchase of the inheritance of the same. Paid to Tyrconnell, his mother, his brother, and Mr. Weston, ...	£1,000
"For the other part of the said fishings, and for the remainder of Mr. Weston's estate in the said river about the Derry, excepting to him and his heirs £10 yearly rent, and three pounds and a half yearly for two years yet to come ; and for Captain Brooks his estate of farm in certain fishings upon both sides of said river, ...	1,500
"For Lough Foyle, ...	£2,500

"BANN.

"For Sir William Godolphin's lease, ...	£700
For the Fee simple, ...	1,200
For purchasing liberty of soil, etc., ...	360
	£2,260

"These sums, amounting to £4,760, have been disbursed by me and my partners to sundry persons for their several estates in the premises over and above the costs and charges expended as well in suits of law as otherwise, for clearing of sundry titles and claims, as is to be testified by gentlemen well-known that are now here and stand bound with me for the great part of the monies laid out for the same.

"My humble desire, therefore, is that I and my partners, being in number seven, may have the sum of £4,760, with such further respects for our said costs and charges as to his Majesty and your Lordship shall be thought fit—the rather for that the aforesaid sum of £4,760 doth not amount about six years' purchase of £800 yearly rent, at which rate will farm the fishings which now is to be surrendered, and is little above seven years' purchase of the rent, being 1,000 marks per annum at which Londoners do now let the same.

(Undated).

"JAMES HAMILTON."

In June, 1610, Hamilton's bill was honoured, and he actually got in cash £4,500, of which the citizens of London found £2,000 and the British Exchequer £2,500. Such was the profit of two small "deals" with Chichester in Ulster waters. The scanty references in the Calendars to this branch of the swindle (S.P.I., 1610, 229, 476, 505) compel investigators to resort to the unpublished (and not readily decipherable) accounts in the London Record Office.

When the money was paid to Hamilton, the canny King did not forget that £200 was lying in the hands of the Vice-Treasurer, Mr. James Carroll, for Hugh O'Neill's "beeves." On the 29th September, 1610, he wrote to Chichester "to confirm to the assignees of John Manwood, deceased, a

former warrant for the sum of £200, escheated to the King by some of the late fugitives " (S.P.I., 506). This time there was no protest, and presumably the money was handed over.

The dishonesty of the Hamilton-Chichester claim for compensation, as regards Lough Foyle, is as plain as in the case of the Bann. Sir John Davies' report on the Donegal fisheries to the Privy Council (omitting verbiage), in 1610, ran :

" The Earl of Tyrconnell, by deed of the 28th February, 1602-3, did grant unto Nicholas Weston, the moiety of the fishing of Lough Foyle, on condition that, if the Earl paid £200 to Weston, the lease should be void, and Weston have the use of the fishery for years only ; and, by another deed of the 2nd February, 1604, granted the said moiety to Mr. James Hamilton and others, at a rent of £10 a year. Afterwards, in Michaelmas, 1605, the Earl suffered a recovery to the use of James Hamilton. These conveyances are void, because the Earl is now dead, and the Recovery was suffered since the treason was committed. Besides we take the fishing of Lough Foyle to be a royal fishing. . . and no special mention of that fishing in his Letters Patent ; and consequently the Earl had no power to convey the same " (S.P.I., 567, 571).

The Attorney-General's contention was that the Earl of Tyrconnell had no right of fishing in Lough Foyle because it was a " Royal fishery," which could not pass by Patent without apt words ; and, therefore (irrespective of death or forfeiture) Tyrconnell had no estate therein, which he could mortgage or grant. But if Tyrconnell's Patent was inapt to pass a " Royal fishery " in Lough Foyle, so must O'Neill's have been for the Bann,—also declared to be a " Royal fishery." Both Patents were settled by Davies, yet his law in O'Neill's case differed entirely from that in O'Donnell's. Against Hugh O'Neill he raised no objection that the Bann was a " Royal fishery," but merely denied that the " parcels " in his Patent included the river. When O'Neill submitted to blackmail he was allowed to resume control of the fishery. O'Donnell, in his " Remonstrance " to the King from exile, makes no mention of any proceedings or device to deprive

him of the fishery, whereas O'Neill, his overlord (by tribal reckoning) complains " his fishing of Lough Foyle in like manner compassed, which also he was forced to purchase at the new rather than be at continual suits of law where he saw he could have no indifferency of justice " (Mn. 123).

Davies' report makes no reference to the bearing of the Derry Inquisition (taken before Chichester and himself, 1st September, 1609) on the Lough Foyle case. It was there found that the Culmore fishery had vested in the Crown since Sir Cahir O'Doherty's rebellion ; but that Alderman Nicholas Weston, of Dublin, " for the space of four years past or thereabouts, had been in possession of the several parcels of lands and fishings ensuing, viz.—Dowle, Medowne, Koolkeragh, with the fishing of the Fahan and other small fishings thereunto belonging . . . by conveyance from Sir D. O'Cahan . . . but whether it be good in law or no the jurors know not " (C.V., 171).

The Derry findings do not mention Hamilton at all, yet that he was in possession of Lough Foyle in 1608 is proved by Chichester's reply to a petition from Sir Nial Garve O'Donnell, who having deserted Tyrconnell, sought a patent of the fishery as a reward. The Deputy's answer (May, 1608) tells Sir Nial :

" You shall have all the fishings which is the King's on Tyrconnell side, and you may make use of it for this season, but what belongs to private men, as Mr. Hamilton and others, we cannot take from them without agreeing with them, which you may do if you desire it for your profit " (251-275). A few months later Sir Nial was sent to the Tower of London with O'Cahan so as to be well out of the way.

The fact that the Derry findings (and Docwra's treaty) record a conveyance of lands and fisheries from O'Cahan to Weston makes it probable that one of Chichester's earlier devices for despoiling O'Neill was to recognise O'Cahan's title to make a grant to strangers and then to hold it valid against O'Neill.

Afterwards any necessity for using Weston as a tool was removed by the Flight of the Earls, and then the " great discoverer " had to be dealt with as an inconvenient principal.

CHAPTER XIX.

THE PERNOR OF THE PROFIT.

The Deputy's traffickings were resented at Court, and only for Cecil's protection, the money losses in which the King and the Londoners had been involved by the "Wakeman" grant must have precipitated his downfall. He evidently became alarmed, though his abuse of the Commission for Defective Titles was still undetected. His misconduct in this respect can best be measured by contrasting it with his own guarantee to the Government, four years earlier, as to how the powers of the Commission were exercised. In a despatch to the Lord Treasurer on 10th Oct., 1606, Chichester vindicated himself thus:

"They complain here that we are too strict in examining title of such as offer to pass their lands upon that Commission. . . . Here we take this course:

"First, we award a Commission to indifferent Commissioners to inquire publicly of what lands the party is possessed, and of what estate. Upon the execution of this Commission, all such as pretend title come in and make their claims, of which return is made unto us by the Commissioners; and then, before the Book is suffered to pass, not only they whose claims have been found by the Inquisition, but all others who come in after, are heard at the Council-table and their claims examined.

"By this practice, it follows that these Books pass very slowly, and the party who passeth his lands is put to extraordinary charge, as well in purchasing and in the examining of this Commission as in attendance, till we be satisfied that the grant may pass without prejudice to any other subject.

We take care that all subjects' rights be saved in the grant. . . . This course, though it be somewhat chargeable to the subject, we hold to be necessary in this Kingdom, where many disseisins and intrusions have been made by one man upon another, in the times of trouble and confusion" (C. MS., 129).

In 1611, driven by the difficulties of his position, he hit on a plan for overcoming them which would enable him, if his practices were discovered, to prove that he had disgorged everything which the Londoners could claim. At the same time its furtiveness secured him the advantage, that he could again lay hands on his discarded acquisitions should events favour that course. Backed by Sir Thomas Phillips, the Deputy meant to offer such discouragement to the Corporation, as might tend to the abandonment of their adventure, but meanwhile he would put on record evidence of his own good faith. Accordingly, in April, 1611, after Hamilton had captured the £4,500, Chichester proceeded to divest himself of the entire Bann, and re-vest it in the Crown. He had also taken possession of a portion of the Foyle fishery at Culmore, with a castle and 300 acres adjoining. These originally formed part of the O'Doherty territory patented to the Chief by King James, but reserving to the Crown, Culmore Castle, its fishings and the 300 acres. This Castle, 300 acres and fishings, as well as Lough Foyle and Bann, had been contracted to the City, but the Deputy had secretly and illegally seized on them. He therefore executed a Deed, purporting to "bargain and sell" the Bann and Lough Foyle to the King for £550; and then assigned to his Majesty the Castle, 300 acres, and fishings of Culmore. The Culmore property he not only never owned, but it was specially excluded from his Patent.

This instrument, dated 3rd April, 1611, was duly enrolled in Chancery. A conveyance to the Sovereign personally was then without precedent in Ireland, yet Chichester's deed contains the ordinary covenants by and with a private individual for "quiet enjoyment," "good title" and "further assurance." These are given to the King, not only on the part of himself, but on behalf of his wife, Dame Lettice. The absence of the Royal Sign-manual was supplied in curious-

wise. Archbishop Jones set a seal to the parchment—not purporting to be the Great Seal of Ireland, but a signet of his own on behalf of the King. There is no reference to this Surrender in any State paper, although if authorised by the London Government, there should be some trace of the correspondence either in England or Ireland. The manner in which its execution on behalf of the Crown was arranged, would naturally have been made the subject of despatches of State at that period had it received Royal approval. None such exist.

Chichester's "surrender" of the Bann and Lough Foyle (lopped of its more luxuriant verbiage) is :

"This Indenture, made the 3rd day of April, in the year of the reign of our most gracious sovereign lord King James of England, France and Ireland the 9th, and of Scotland the 44th, between Sir Arthur Chichester, Knight, Lord Deputy and Governor-General of the realm of Ireland, of the one part, and our said sovereign lord the King's most excellent Majesty that now is, of the other part :

"Witnesseth that whereas James Hamilton, by Deed of the 10th April, 1606, sold to Sir Arthur Chichester and his heirs, amongst other things, the fishings of the river of the Bann between Lough Sidney and the Salmon-Leap, and the ground and soil of the said river, and the old weirs for eels near Castle Toome, with liberty upon the banks on either side to pitch nets, etc., to be holden of his Majesty, etc., paying therefor yearly unto His majesty, etc., the rent of 12s. 6d. Irish, on the 29th September and the 25th March by even portions, which, with other things, had been granted to James Hamilton, by Letters Patent dated 20th July, 1605 ;

"And whereas the said James Hamilton, by Indenture of the 14th May, 1606, likewise sold to Sir Arthur Chichester and his heirs the moiety, or one-half, of all that the part or moiety which the said James Hamilton had of and in the fishing of the Bann, from the rock called the Salmon-Leap unto the main sea, and also the moiety of his part of all the soil and ground covered with water of the said river ; and power to pitch nets, etc., and also the moiety of his part of all the weirs and fishing-places within the said limits, etc. ;

"And whereas the King, by Letters Patent hath granted to Sir Arthur and his assigns for life the Castle of Culmore, in County Donegal, with 300 acres of land next adjoining, and by another Patent hath lately granted unto the said Sir Arthur, his heirs and assigns, among other things, the salmon-fishing of Culmore, in the Co. of Donegal and of the Derry, or one of them, with power to pitch nets, etc.

" This Indenture witnesseth that the said Sir Arthur, for and in consideration of the sum of £550 English, paid to him by Sir James Hamilton, for and in behalf of the King's Majesty, who hath given satisfaction to the said Sir James Hamilton for the whole fishing of the Bann, whereof and wherewith he, the said Sir Arthur, doth acknowledge himself to be fully satisfied and paid, etc., and doth clearly acquit, etc., as well the King's Majesty, etc., as the said Sir James Hamilton, etc., by these presents doth grant, bargain, sell, etc., unto the King, etc., the above-mentioned Castle of Culmore, the fishings, and all and singular the above-recited premises, and every part and parcel thereof, etc., in and by the above-recited Letters Patent, Deeds, etc., expressed.

[Long covenants for title, for further assurance, and for quiet enjoyment by Sir Arthur and his wife, Dame Lettice, here follow.]

" In witness whereof to that part of these presents remaining with his Majesty, the said Sir Arthur Chichester hath set his hand and seal ; and to that part of these presents remaining with the said Sir Arthur, his Majesty hath caused a seal to be set.

" Given, etc.,

" Arthur Chichester."

Added beneath, (in Latin) :

" On the day and year within written, I, Thomas, by Divine Providence Archbishop of Dublin, Chancellor of our lord James, King of England, Scotland, France and Ireland, of his Kingdom of Ireland aforesaid, have accepted the within Surrender to the use of the same lord the King, by the hand of the within-named Sir Arthur Chichester, Knight,

Deputy of the said lord the King of his Kingdom of Ireland aforesaid.

"Witness my own hand.

"THO. ARCHBISHOP OF DUBLIN, CANC."

(C.P.R., 200, No. 31).

The Lord Chancellor, as head of the Office of the Rolls, was entitled to accept Surrenders without a Commission from the King, but there is no trace of any surrender by Hamilton, who was paid the £4,500 as the pretended true owner of the Foyle and the Bann. Chichester's deed was a real and valid document; but that the King was made aware of its execution is more than doubtful. The Deputy throughout treats himself, instead of Hamilton, who received the £2500, as the principal to be dealt with by the Crown, and afterwards he kept up in the Crown Rentals the imposture that he remained tenant for the Bann and Lough Foyle. Of course the recitals alleging that the King had granted him Patents for Culmore Castle, its fishings and 300 acres for his life, are falsehoods. Poor as was Chichester's title to the Bann, he had no right whatever to Culmore. He held a Patent for the confiscated lands of Sir Cahir O'Doherty in Innishowen; but when O'Doherty's Patent was granted in 1603, James I. expressly excepted from it the very things which Chichester affected in 1611 to assign to the King. Thus his conduct as to the fishery of the Foyle was, if possible, more audacious than in the case of the Bann. It makes a historical companion-picture therewith. The facts shortly told, deserve to be set down. Sir Cahir O'Doherty's Patent reserved to the Crown "the Castle of Culmore and 300 acres next adjoining, with the whole fishings of Culmore, allowing him and his heirs four salmon per diem during fishing time; yet with the King's royal promise that, in time of peace and so often as the Castle of Culmore shall be relinquished by the King, Sir Cahir shall have the custodium of the Castle and fishings without rent" (S.P.I., 79).

Chichester got the escheat of O'Doherty's estate only after Sir Cahir's rebellion and death, so in the Deputy's Patent,

Culmore Castle, its 300 acres and its fishings were expressly reserved to the Crown. Yet in 1611 he purported to assign these to the King, although he never legally possessed them, or had any grant of them whatsoever.

Culmore was a Fort established by Queen Elizabeth in 1556 on land given by the O'Dohertys. Ten years later the Chief presented the site of Derry City to the Crown (M., 85 ; and P.U., 104).

About 1601 Sir H. Docwra, Governor of Derry, split the O'Doherty clan by recognising Sir Cahir O'Doherty, then a boy, as the right heir, and a little later got him a Patent for his chiefry in Innishowen, dated 19th April, 1603. This Patent reserved to the Crown, Culmore Castle, the fishings, and 300 acres of land. On the 28th January, 1605, O'Doherty received a re-grant, which again excepted the Castle, the fishings, and the 300 acres (P.R., James I., 63).

On the 30th May, 1605, the custody of the Castle was given to Captain Hart, during the King's pleasure (C.P.R., 72-45). On the 20th February, 1605-6, Hart received a lease of the Castle and Fort, with 300 acres adjoining and the fishings, to hold for 21 years, if he lived so long, at 10 shillings a year (C.P.R., 83-24). This Lease being made to Captain Hart, as custodian of Culmore, contains the following prohibition against alienation :

" The said Henry Hart shall not alien, sell, assign, grant or set over the premises, or any part or parcel thereof, to any person or persons whatsoever, without special licence had and obtained therein, from the Lord Deputy or other Governor of this realm for the time being."

In 1608, O'Doherty, who was nurtured by the English, was insulted and brutally struck by Paulet, Governor of Derry, although he had just acted as Foreman of the Lifford Grand Jury which outlawed Hugh O'Neill. Sir Cahir was a rash and haughty youth, and felt, although he was " the King's O'Doherty," he would get no justice against Paulet from the Deputy. He therefore foolishly flew to arms, burnt Derry, re-took Culmore from Hart, and, having slain Paulet, was killed himself within a few weeks of his revolt. Chichester was delighted at this outbreak, which, coming directly after

the flight of O'Neill, O'Donnell, and Maguire, and the imprisonment of O'Cahan, rid Ulster of every important Chieftain. He at once sent Francis Annesley and Davies to London to beseech Innishowen for himself. The petition to Cecil of the 26th November, 1608, is endorsed: "Lord Deputy's Agents to my Lord." On the 14th May, 1609, he thanks Cecil for the gift of O'Doherty's lands:

"Sir John Davies landed here on the 5 inst., by whom he received divers letters. . . . One made mention of his Majesty's pleasure to bestow upon him the lands of the late traitor O'Doherty, for which he can return no more but the protestation of his humble and faithful services" (S.P.I., 203).

On the 30th June, 1609, a King's Letter conferred O'Doherty's lands on Chichester, with the custody of Culmore Castle, "a daily fee of 4s. English for a constable, and 2s. 6d. for a gunner, and to have charge of all such warders as shall be thought fit to be maintained there" (C.P.R., 153-35). The words of the Royal Letter afford the only justification for Chichester's recitals in the Surrender. They are:

"We have caused a project to be made for the distribution of our land in Ulster, which we approve so well as we are not yet resolved to alter the same in any point of substance, for favour or merit of any particular person. Notwithstanding we, having consideration of your extraordinary desert, and in regard of the eminent place of service you hold in that realm, graciously grant the territory and country commonly called Innishowen, otherwise O'Doherty's Country . . . excepting such lands as are to be allotted to the Bishop of Derry; and excepting 1,000 acres of land to be allotted to the City of Derry . . . the keeping of our Castle of Culmore . . . and all lands, tenements, *fishings*, tithes and hereditaments thereunto belonging or in any wise appertaining, during your natural life . . . excepting such quantity of land to be added to our Castle of Culmore as you and our Council there shall think fit to annex unto it."

Hart's lease of the Castle, fishings, and 300 acres was still outstanding (with its covenant against alienation), and

Chichester, to compass its cancellation while concealing his purpose, caused the following clause to be inserted in the King's Letter :

" And we authorise you to accept the surrender of all the premises, or of so much of them as you, or such as shall be Patentee thereof by your appointment, shall think fit ; and thereupon that you do make a grant or grants by like Letters Patent, without any mention to be made of the said surrender in the Letters Patent, lest that any defect therein might make the same Letters Patent defective unto you or your assigns " (7 James I., pt. 2, p. 153 ; skin 12 dorso).

There is no trace of any Surrender by Hart on the Patent Rolls, or of any assignment of his Lease to Chichester. On the contrary, a Petition of the Londoners in 1612 shows that Hart was in possession then of the fishing at Culmore. Even if he did assign to the Deputy, contrary to covenant, he had only a short leasehold interest to part with, whereas Chichester purports to re-convey the fee-simple to the Crown. Moreover, the Patents which followed the King's Letter refute the Deputy's pretensions in the Deed of 1611. On foot of this Letter, Chichester received two Patents, one appointing him custodian of the Castle and Fort, on 24th October, 1609, " and of all the lands, tenements, tithes and hereditaments to the said Castle or Fort belonging or in any wise appertaining, and also the charge and command of all warders, etc." (C.P.R., 149-3) the other on 22nd February 1909-10), granting him the territory of O'Doherty, but reserving to the King the Castle and Fort, the fishings, and 300 acres near the same. Rent: £86 12s. 8d. (C.P.R., 161-65).

Chichester thought the rent too high. On the 21st June, 1610, a King's Letter directed a Patent to the Deputy for the Governorship of Greencastle, Innishowen, with fees for constables and warders, and declared :

" Said command, charge and entertainments were then granted in respect of certain fishings and other hereditaments of good value, holden by him in fee simple in Ulster, within the limits contracted for by the King with the Society of London, without which they could not have had full benefit of his Majesty's said contract ; and by him dutifully

granted and yielded up, for the furtherance of the intended Plantation of that Society in these parts." The Patent issued at Westminster, 3rd February, 1611. (L.N., pt. 2, p. 124). This grant seems to have been made as a complete acquittance of the King's obligations to the Deputy. The new King's Letter ordered Culmore Castle, its fishings, and the 300 acres to be reserved to the Crown, as before (C.P.R., 173-49). A Dublin Patent issued on the 16th July, 1610, confirming to Chichester the grant of O'Doherty's Country at a rent of £30, but reserving to the King the Fort and Castle of Culmore, with the 300 acres adjoining, and all the fishings. Chichester and his heirs were thereby licensed to receive 4 salmon a day during the season (C.P.R., 169-22).

Yet a year later the Deputy executed a Conveyance to King James alleging that this Castle, its 300 acres and fishings, were his property, and had been given to him by the very grants which reserved them to the Crown. He affected to restore them by deed to his Majesty, with covenants for " quiet enjoyment " and " good title," both on his own part and on that of his wife. The farce was heightened by the fact that the only thing relating to fish, which the Patents actually granted, Chichester took care not to part with. This was the privilege of receiving " 4 salmon a day " ; and he tenaciously retained it. For in the Co. Donegal Inquisition, at Lifford, 16th April, 1621 (taken to afford a foundation for his later Patents), the finding as to O'Doherty's territory contains this daring account of the reservation :

" Except the Fort and Castle of Culmore in Innishowen, and the fishery of Culmore, out of which fishery the King granted, for himself, his heirs and successors, that the aforesaid Lord Chichester, his heirs and successors should have for their use for ever 4 salmon a day, during the time set apart for fishing in each year, and also excepting the 300 acres of land lying near the said Castle " (I.I., No. 17).

The "4 salmon a day" were, after this finding, included in his re-grant of 1621 (C.P.R., 523), although the Castle, land, and fishings had meanwhile been given by the King to the City of London. That troubled him not.

It is characteristic of the family persistency that, in a

modern lease by the " Irish Society " of Lough Foyle and part of the Bann fishings, there is reserved " the right claim or demand, if any, of the Marquis of Donegall, his heirs and assigns, to have four salmon every day yearly forever, out of the fishery or salmon fishing at Culmore, at or near the Fort, Castle or lands of Culmore, in the River of Lough Foyle, during the time of taking salmon therein, or to any payment or compensation payable to the Marquis, his heirs and assigns, in respect of such right, claim or demand."

This lease is dated the 2nd January, 1894, and runs until 1926 at a rent of £5,080 per annum. As Chichester in 1611 " surrendered " the Culmore fisheries (which he never owned) to the Crown, and was compensated for so doing, it is bracingly reminiscent of past ages to encounter the covenant as to the " 4 salmon " in a lease of 1894.

Culmore lay on Lough Foyle ; and its fishing, fort and 300 acres formed part of the grant in the London Charter of the 29th March, 1613. The " 300 acres," on being surveyed in 1825, turned out by admeasurement to be upwards of 440 acres, and were valued at over £600 a year (P.U., 575).

Powerful as were the merchants of London, they never got possession from the Crown of any of the River Bann except the tidal fishing. Even of that they received at first only one half. The part claimed by the Bishop of Derry, although of doubtful title, was granted him in a Patent of the 25th May, 1615, by Chichester in order to embarrass the Londoners, viz., two tide-water fishings on the Monday after St. John's day, and half the tithes of all the fishings in the Bann " except the tithes belonging to Lord Chichester " (C.P.R., 278). Considering that the Deputy in 1611 renounced before Archbishop Jones all claim to any fishery in the Bann, such an effort to engraft a title of his own to the river, on an ecclesiastical grant, affords another instance of Chichester's " grasp."

The result to the City of London was that they were forced to procure a private Act (3 and 4 Anne, c. 1) to purchase the Bishop's rights, and from 1703 have been obliged to pay £250 a year to the Protestant See of Derry as rent therefor, (P.U., 101). The amount, reduced to £224 10s. 6d. (present currency) is still paid by the Irish Society to those to whom

the right was sold by public auction, after the Disestablishment of the Irish Church in 1869.

Sir Randal MacDonnell's "fourth," although snatched from him by a decision of Chichester in the Star Chamber in 1610 (as will subsequently be exposed) was restored to him by Charles I. So, although King James contracted to grant the Corporation of London the entire Bann from the sea to Lough Neagh, they originally received none of it except on paper, save only half the tideway, and for this had to pay large sums to Hamilton, Chichester, and the Bishop of Derry.

On the 30th June, 1612, the Londoners petitioned the Privy Council, complaining of the "impediments to their proceedings in Ulster"; and prayed that several parts of the fishings granted to them should be given up by the holders thereof, viz. :

"The pool between the Derry and the Castle of Culmore, by Captain Hart.

"The pool towards Castle Toome, by Captain Russell.

"Two pools claimed by the Bishop of Derry.

"All granted by Patents under the Great Seal of England, which breed much question and great prejudice to the Plantation."

Upon this, Chichester was ordered to "inquire into the truth of these allegations ; and, if the fishings be withdrawn contrary to the tenor of the contract, he is to pass the City into possession, and compound for the titles, if any be good in law" (S.P.I., 271).

Years were allowed to elapse before the Patent to the Londoners was perfected. It was only sealed at Westminster on the 29th March, 1613. Lest doubt should be possible as to whether the entire River Bann, from the sea to Lough Neagh, was conveyed by it, the granting words are here set forth : "We will also, by these presents, for ourselves, our heirs and successors, give and grant to the aforesaid Society of the Governors and Assistants of London, of the new Plantation in Ulster, within our Kingdom of Ireland, and their successors, . . . all that water, creek, stream, or rivulet of the Bann from the high sea up to the pool called Lough

Eagh, and the ground and soil thereof, and also the rocks and salmon-leap there, with their appurtenances, and the whole piscary, fishing and taking of fishes, as well salmon and eels as all other kind of fishes whatsoever of, in, and within the said water, creek, and salmon-leap aforesaid, as well with nets of what kind soever, as also by other means whatsoever, from the deep sea into Lough Eagh aforesaid, and in through and within all the watercourse within Antrim, Coleraine, and Tyrone, or any of them. . . . Excepting, however, and out of this our present grant entirely reserved, all that fishery belonging to the Bishop of Derry, in the said River Bann, found in said Inquisition of Coleraine, in said County of Coleraine."

This reference to an "Inquisition at Coleraine" is a mistake. There was no Inquisition in Coleraine town, as the Charter alleges. It was held at Limavady, where "office" was found that "two small pools" of the "fishing of Clonie" were "in possession of the Bishop of Derry, ever since the wars of Shane O'Neill."

The Patent also conveyed to the City the Castle of Culmore, with three hundred acres of land, and the entire fishing of Lough Foyle. The fishings of Bann and Foyle were granted *rent-free*, and the Patent contained covenants guaranteeing the Londoners "quiet enjoyment," vouching the King's title and "further assurance" if any difficulties arose.

Many hindrances were placed in the way of their taking possession. In spite of payment, in spite of the Surrender of 1611, in spite of the Deputy's pious undertakings and his duty to the King, in spite of his commendation of their "noble enterprise," greed overcame his good resolutions. Within five years of the issue of the Londoners' Patent, Chichester was deep in another plot to capture the fisheries for himself. Although no longer Deputy, while holding the office of Lord High Treasurer he caused an entry to be inserted in the Crown Rental, declaring that he was the owner of the Bann and Lough Neagh, at a rent of 12s. 6d. a year, as assignee of James Hamilton. Shortly after this he got a jury of his adherents together in his own town to find that both Lough and River were his property. On the

strength of this verdict he had a fresh Patent fabricated, asserting that King James had given the fisheries to himself, as though the Patent to the City of London had never been made.

If the most influential Corporation in the world, armed with such a grant, could not enforce their rights, need we marvel at the fate of O'Neill, O'Donnell, O'Doherty, or O'Cahan ? The case of the Londoners should have specially appealed to the Deputy. To a large extent they were moved by zeal for the interests of Protestantism, and Chichester was a zealous assailant of Papists. The Corporation were " to establish the true religion of Christ among men hitherto depraved, and almost lost in superstition "; and the Charter warranted them as " burning with a flagrant zeal to promote the King's pious intention." They, of course, had some eye to profit ; but they would never have embarked on the Ulster peril unless animated by a national and religious inspiration. Yet the Viceroy of Ireland cheated them over a public contract, and involved high officials like the Attorney-General in the covin.

Whatever may be thought of his dealings with Irish chiefs, his ingratitude to the monarch who had lavished on him honours and bounties, his deception of his own countrymen, his betrayal of the City of London, and his abuse of power for sordid ends, were exceptional even in a century when baseness throve in high places.

The Corporation had hardly provided his blackmail, and their Patent had not yet been passed, when he called on them for Crown rent. Writing to Sir Thomas Ridgeway in London, 1st April, 1610, the business-like Deputy reminds him : " The season of the fishing the Rivers Bann and Lough Foyle will begin next month. Would understand whether the Londoners are to have the benefit of this season's fishing. For those who have formerly fished in it have sent unto him to be informed therein." This, of course, was a hint in Hamilton's interest, and showed that he sought to have another's season profit out of the fisheries. Chichester then proceeds : " But, however the fishing is disposed, he (Ridgeway) must interpose then for the Easter rent of the

County of Coleraine " [Derry] (S.P.I., 423). At that moment Chichester was embezzling from the King the rents of all the escheated counties, and for two years (as will be shown hereafter) he and his creatures put them in their pockets.

In the cradlehood of the Plantation, when the Londoners most needed assistance, the Deputy, through subordinates like Sir Thomas Phillips and others, discouraged them, in the hope that their possessions would be abandoned to himself and his parasites. The King felt obliged to protest on 21st December, 1612.

" . . . We are not ignorant how much the real accomplishment of that Plantation concerns the future peace and safety of that Kingdom ; but if there were no reason of State to press it forward, yet we would pursue and affect that work with the same earnestness as we now do, merely for the goodness and morality of it, esteeming the settling of religion, the introduction of civility, order, and government among a barbarous and unsubjected people to be an act of piety and glory, and worthy always of a Christian Prince to endeavour ; though we understand by some of the Undertakers and servitors there, with whom we have had speech, that there is a general backwardness and slack proceeding in the Plantation ; yet the particulars thereof are either concealed from us, or diversely reported to us, every man being willing to improve his own merit in that service, and to transfer the faults and omissions therein upon other men. . . ."

The wily Chichester, always with sly innuendoes, threw the blame on the Londoners.

CHAPTER XX.

THE CASE OF THE ROYAL FISHERY OF THE BANN.

A FEW months after Hamilton succeeded in securing £4,500 compensation from the Corporation of London and King James, on foot of the Wakeman Patent to the tidal Bann, the Attorney-General proceeded in the Star Chamber (over which Chichester presided), to wrench from Sir Randal MacDonnell the enjoyment of his "fourth" of this fishery. The Deputy had long employed Hamilton to raise objections to MacDonnell's Patent which were heard by himself, and now only waited formally to declare Sir Randal's title to the fishery void. The Bishop of Derry's claims would then be the only remaining clog on the Londoners' charter.

The method adopted to plunder Sir Randal has been invested with serene legal dignity in the *Reports of Cases Resolved in the King's Courts in Ireland*, published in Norman-French by Sir John Davies in 1615, under the style of "The Case of the Royal Fishery of the Bann." It was tried in 1610 and has been gravely cited for three hundred years by unsuspecting text-writers and judges, as a fountain-head of water-lore and Patent law.

The case purports to have been brought by the Attorney-General to assert and protect the Royal prerogative. In reality it was got up in furtherance of the sordid conspiracy by which at first the King and then the Londoners were cheated. Possession of the Bann had now been taken by the City; and Chichester, having secured large compensation for the tideway, felt that he could give the Corporation a little more value for their money by taking his revenge on Sir Randal.

The trial as to MacDonnell's Patent ranks with the case of "O'Cahan *v.* O'Neill" as a travesty of justice. The grandiose caption "The Case of the Royal Fishery of the Bann," merely masks that of "Chichester and Hamilton *v.* Sir Randal MacDonnell." Fortunately, we possess Davies' own version of the proceedings, with the admission that he incited and conducted them himself. It is the third case in which evidence exists that Chichester filled the rôles of both Judge and plaintiff, while pretending that the proceedings were taken on behalf of the Crown. For at that date, "Parliament took the Council-Board to be a place of judicature, to judge titles of land between party and party" (H. MS. C., 1904, p. 218).

The opening passage of the Attorney-General's "Report" is: "In the River Bann in Ulster, which divides the County of Antrim from the County of Londonderry, about two leagues from the sea, where the river is navigable, there is a rich fishery of salmon, which was parcel of the ancient inheritance of the Crown, as appears by several pipe-rolls and surveys, where it is now in charge, as a several fishery. But now it is granted by the King to the City of London in fee-farm.

"The profit of this fishery for the space of two hundred years past was taken and shared by the Irish lords, who made incursion and intrusion on the possessions of the Crown in Ulster, and possessed by strong hand the territories adjoining the said River Bann, until the first year of the reign of our lord the King that now is" (Translation of 1762, p. 149).

In so mentioning the grant to the City of London, Davies leaves the inference to be drawn that it was one for the tidal fishing only, whereas it covered the entire river from the sea to Lough Neagh.

His description of Sir Randal's grant then states that it gave him the territory of Route, which adjoins the River Bann where the fishery is, and "omnia castra, messuagia, tofta, molendina, columbaria, gardina, hortos, pomaria, terras, prata, pascua, pasturas, boscos, subboscos, redditus, reversiones & servitia, piscarias, piscationes, aquas, acquarum, cursus, etc., ac omnia alia haereditamenta in vel infra

dictum territorium de ROUT in comitatu ANTRIM, exceptis & ex hac concessione nobis haeredibus & successoribus nostris reservatis, tribus partibus piscationes de THE BANN."

If these words did not convey a fourth part of the Bann to Sir Randal, law Latin is a vain thing. The Report proceeds :

" Upon this grant, Sir Randal MacDonnell made petition to the Lord Deputy to be put in quiet possession of the fourth part of the said fishery, which then, by special order of the Council-table, was put in sequestration. The Lord Deputy, being informed by the King's Attorney that no part of the fishery passed to Sir Randal MacDonnell by this grant, required the resolution of the chief judges being of the Privy Council, in this matter ; who, upon view of several pipe-rolls, in which this fishery was found severally in charge, as part of the ancient inheritance of the Crown, and upon consideration of the said grant made to Sir Randal MacDonnell, certified their opinion and resolution : That no part of the said fishery passed to the said Sir Randal MacDonnell by the Letters Patent aforesaid."

The Attorney-General's allegation against the Patent depended on the fact that words of " reservation " were used instead of words of " grant," to confer the fishery. He maintained : 1st, That a reservation by the King of three parts of a fishery did not carry a grant of a fourth part ; and, 2nd, that a grant of lands abutting on a river gives the riparian owner no title to the fishing therein, if it be a Royal fishery—on the ground that the existence of a Royal fishery works an exception to the rule of Common Law.

The Suir, Nore, Rye and Barrow, in Southern Ireland, were declared King's rivers in an Act of 1537 (22nd Henry VIII. c. 22) ; but this was merely passed to enable barges to ply unimpeded to and from Waterford, and imported no ownership. The Bann, however, was no Royal river, except in the imagination of Davies.

Salmon is a Royal fish in Scotland, in so far that a grant of fishery will not confer a right to take salmon without apt words, but the accession of the King of Scots did not change the law of England or Ireland. No " Royal fishery " had been legally pronounced to exist in Ireland until " The Case

of the Bann," and all later text-writers have pointed out the blunder the Attorney-General made, in claiming that because a river or a road may be called " the King's highway," the Crown have any property therein. In his report to the King in 1609, Davies raised the same point as regards Lough Foyle, but asked no Court to decide it.

The idea was first started in Queen Elizabeth's reign, before the Scots King acceded, and not by a lawyer, but by Miler Magrath, Archbishop of Cashel. In a " Book set down in writing by her Majesty's express commandment," 30th May, 1592, this ex-monk wrote : " It is holden for an opinion in Ireland that her Majesty hath special right and interest in all principal rivers, loughs, lakes, and great waters in all islands, and commodities contained upon them. . . . If this opinion be true, her Majesty may have a very great rent by setting them. . . . But whether this be in her Majesty's right to give or not, I am not sure of it " (S.P.I., 491). Miler's paper was apparently written in London, as he was there on 21st November, 1591, and 26th June, 1592 (S.P.I., 448, 532). Such poor paternity had the opinion given by Davies as to the ownership of Lough Foyle and the Bann.

The name or nature of the Court before which he argued the existence of a " Royal Fishery " in the Bann, is withheld by Davies. The accounts of other trials in his " Reports " mostly (though not invariably) mention the name of the tribunal which decided them, and one expressly states it is a Report of proceedings in the " Castle Chamber." Davies being silent as to the forum in which his antique learning in the Bann case was lavished, investigation points to the conclusion that it was the " Castle " or Star Chamber, over which Chichester himself presided, attended by other men of war. We know he sat there to decide Patent Law at the trial of " O'Cahan *v.* O'Neill," and therefore his assertion of jurisdiction against MacDonnell, need shock no one. He was interested in both cases, and in both he ruled in favour of the Attorney-General's argument.

The resolution " the chief judges " came to was :

" That no part of this Royal fishery of the Bann could

pass by the grant of the land adjoining, by the general grant of 'all fisheries,' for this Royal fishery is not appurtenant to land, but is a fishery in gross, and parcel of the inheritance of the Crown; and general words in the King's grant shall not pass such special royalty, which belongeth to the Crown by prerogative."

The "chief Judges," of course, sat with the "martial men" under Chichester at the Council table; but the Attorney-General failed to ask the Court how its decision could be reconciled with the grants or assignments of the Bann to Wakeman, Hamilton, Bassett, and the Lord Deputy. Nor did the "martial men" or the "Chief Judges" enquire of Davies why he took no steps to quash these Patents, or interfered with none except MacDonnell's.

Chichester and Davies, in 1607, got the Brehon Law set aside, as a "lewd custom," by a decision of the King's Bench; but whatever may have been the deficiencies of the Brehon Code, Irish Princes did not try their own cases under it, and decently provided Brehons (who were not removable at princely pleasure) to judge between their clansmen and themselves.

Davies' allegation that "several pipe-rolls and surveys" were produced to the Star Chamber, showing that the Bann was an "ancient inheritance of the Crown," is not lacking in definiteness, but the ancient documents are not specified.

Before examining their nature, a letter from Davies may be cited to show that he knew that such documents as existed would carry small weight. On the 4th May, 1606, he wrote to Cecil: "Ulster hath ever been such an outlaw, as the King's writ did never run there, until within these few years. It was cut into several counties by Sir John Perrot; and yet the laws of England were never given in charge to the greatest part of that people. Neither did any Justice of Assize ever visit that Province before the beginning of his Majesty's reign" (S.P.E., 462).

Yet in a district where the laws of England never prevailed until 1603, a tidal river was, in 1610, held to be the personal perquisite of the King by ancient right. Stranger still, it was decided that it remained the King's after he had given

it away to a subject, along with an adjacent manor, because special words were not used in the Royal grant.

The "Preface Dedicatorie" to Davies' Reports shows the devotional spirit in which he and Chichester addressed themselves to the task of robbing Sir Randal MacDonnell: "It is an infallible argument that the estates of such as rise by the law are builded upon the foundation of virtue, in that God's blessing is manifestly upon them, not only in raising, but in preserving their houses and posterities; whereof there are examples not a few, and those not obscure, in every shire of England and of the English Pale in this Kingdom of Ireland." God's blessing, it will be noticed, in the opinion of the Attorney-General, was given on strict geographical lines. There was none for the parts inhabited by the natives.

CHAPTER XXI.

THE STORY OF THE RIVER.

Let us now examine the records of the Bann on which Davies affects to rely. The latest grant, prior to the decision of 1610, was the lease of the tidal river made in 1600 to one of Elizabeth's generals, Sir William Godolphin, then fighting in her wars against O'Neill. Of it, Chichester wrote to Cecil (23rd January, 1609-10): "Not a penny of the rent has been paid into the Exchequer for many years preceding" (S.P.I., 352). The reason for the non-payment simply was that the Crown could never give possession until the North had been conquered.

The earliest document in the Calendar, suggesting a Crown title to the Bann, arose out of the fanciful grant of "all Ireland" by Henry III. to his son (afterwards Edward I.). The latter (three and a half centuries after his death) was alleged to have made, while prince, the following deed to his valet:

"Edward, eldest son of the King of England, grants to his dear valet and faithful servant, Robert de Beumays, for his homage and services, all the land and tenement which belongs to Hochageran in the County of Ulster, in Ireland . . . except the advowson of the church . . .

"We also grant to the same Robert and his heirs or assigns . . . that in all our water of the Bann they may freely have forever, without any impediment, a free boat, with their nets and all kind of other engines to fish. . . .

London, 26th May, 1263."

(15th James I., Cal. p. 354.)

Of the original parchment there is no trace in England or

Ireland ; but, seven years after the Star Chamber decision of 1610, a " copy " of Edward's grant was enrolled in Dublin, without any explanation of the 358 years' delay. The name of the person at whose instance and expense this was placed on the Roll was not entered, and no note of verification, signed by any official, exists. If a genuine Deed had been brought to Ireland in 1617 from the Tower or elsewhere, there would be some trace of it to-day. It is not enrolled in England, where much more ancient parchments are preserved. Other enrolments in Ireland of the reign of James I., such as those of John Hamilton on behalf of his brother James, give the name of the person authorising the record.

The abrupt resurrection in the Seventeenth Century of an alleged Deed of the Thirteenth Century, without any reason or attempt at verification, is highly suspicious. Frequently, when old records were presented in Chancery, clerkly notes explain the belated engrossment ; but this one was entered as a matter of course, as if there were nothing singular about the delay.

A Robert de Beumays existed, it is true, in 1263, and got other grants, but that affords in this case no evidence of genuineness. Where the art of forgery flourished, details suggesting probability were carefully thought out. Suspicion is heightened by the fact that, immediately preceding this record on the Roll, there was entered an alleged copy of a still more belated grant relating to Antrim (but not affecting the Bann). It purported to be a Patent from King John, likewise unverified and unexplained. These are followed on the Roll by a copy of the Charter of Coleraine, issued on the 28th June, 1614. That Charter had been withheld from enrolment for three years, and was then bulked on the Roll with the supposed ancient instruments, to suggest a like validity. Unless the originals exist, such enrolments of early grants, unvouched and unsupported by English records, possess small historic value.

There is, of course, nothing to show that Sir John Davies used the de Beumays Deed against Sir Randal MacDonnell in 1610, and it may be that the four following records were

alone those he relied on, to prove the assertion of an ancient Crown title :

On the 27th December, 1272, an inquisition was taken for Prince Edward, as to how Sir Henry Mandeville behaved after the King made him Bailiff of Tuiscard (near Coleraine) ; and the jurors found : " That after he became Bailiff of Tuiscard he had on the Bann a fishing boat worth 4 marks a year ; but whether he had a warrant they knew not " (S.P.I., 159).

About 1387 (10th Richard II.), Robert, Marquis of Dublin and Earl of Oxford, committed to Ralph Molyneux and William Simcok, of Drogheda, " the custody of his fishery of the Bann and of the Lynne in Ulster to hold during pleasure."

On the 10th June, 1387, the King " having inspected Letters Patent to the Prior and Convent of Friars Preachers at Coleraine, under the Privy Seal of Edmund, late Earl of March, whereby he granted to the said Prior and Convent a free fishing-boat in the Bann in Ulster, and likewise the liberty of taking half the entire fish on the Feast of St. John the Baptist yearly, in a certain torrent called Lynn, near the same town, the King confirms the aforesaid liberties " (C.P.R.I., 113).

About 1409 Henry IV. granted " to David Archer and others, merchants, licence to carry 4 tuns of Spanish wine, 4 tuns of beer, 4 quarters of meal, for their victuals, and 12 dozen English cloth, and 1 wey of salt, to the region of the Bann in Ulster to the fishery there " (C.P.R.I., 193).

During this period the Kings of England were not Kings of Ireland ; and, even on the bold assumption that these entries establish exclusive possession of the river by Prince Edward and his grantees, that could not make the Bann fishery " royal " where no " royalty " in other respects was asserted by English monarchs to exist.

Until after Henry VIII. was created by statute King of Ireland, there is a gap in the records, and the first time the Bann was put " in charge " for the Crown was on the 3rd June, 1534. Then John Travers received from the Deputy of Henry VIII. a lease " of the whole water of the River of the Bann, in the Northern parts of Ireland, and the entire

fishing and taking of salmon and other fish in the same water ; To Hold for 41 years at a rent of £10."

John Travers was a " gentleman waiter to the Duke of Richmond " (M., 12), who became Master of Ordnance and was afterwards knighted. He figures in a King's Letter to Lord Deputy St. Leger, dated 16th December, 1541, ordering that the site of St. Mary's Abbey should be delivered to him, " being a place very proper and meet to lay in ordnance and artillery."

In the " Red Council-Book " for January, 1541-2, there is a note : " The conditions for fishing the Bann " (H. MS. C., 1897, p. 275). This doubtless refers to " conditions " imposed by the Irish chiefs.

In 1542 the Lord Deputy writes to Henry VIII. :

" We had sent John Travers, Master of your Majesty's Ordnance here, with a company, in aid of MacQuillan against a proud, obstinate Irishman called O'Cahan ; and assure your Highness that the said John by this present is returned having taken as well the said O'Cahan his castle from him, which standeth upon your River of the Bann, being an obstacle to your Highness and other your English subjects to fish there, and has depredated and brent part of O'Cahan's lands " (S.P.I., vol. iii.).

A treaty was made on the 18th May, 1542, by Deputy St. Leger with the local chieftain M'Quillan, to enable " Mr. Travers' servant " to fish the Bann. It is a political, religious and trading instrument, drawn up in Latin. By it M'Quillan undertook :

1st. To acknowledge Henry VIII. as King.

2nd. To renounce Papal supremacy.

3rd. " That for all such exactions as have been by me and my sequel [followers] taken, upon the River of the Bann upon any of the King's subjects, I promise to signify to his Majesty the cause and the considerations thereof, and therein to stand to his Majesty's order." He then guarantees the King three horses and service in war, and to deliver his nephew, as hostage, to " Mr. Travers' servant now at the Bann " (C. MS., 186).

M'Quillan's power to make this treaty was evidently

doubtful, for in the following year he was joined with Manus O'Cahan in a second compact with the Crown. On the 6th May, 1543, an Indenture tripartite (in Latin) was made between Sir Anthony St. Leger, Lord Deputy; Rory M'Quillan, chief of his nation and captain of Rout; and Manus O'Cahan, captain of Oraghtecane. Thereby the said Rory and Manus promise:

"1. That they will not exact any exactions, ransoms or tributes from farmers [*i.e.* lessees], and other subjects of the King repairing to the Bann for the purpose of fishing.

"2. That whenever John Travers, the King's farmer there, or his servants, shall resort thither to fish, they shall have the use of the Castle of Coleraine, for the security of the fishermen, with liberty for the same fishermen to season and salt the fish, and to dry their nets on land.

"3. That they will annually assist, favour, and maintain the said fishermen during their time of fishing.

"4. In consideration of above, they shall receive from the King £10 yearly.

"5. They shall give as hostages, Hugh M'Quin and Jenico M'Quillan on the part of the said Rory, and Donald Ballo and Owney M'Rory on the part of said O'Cahan" (C.MS., 202).

Before Travers' term expired, another lease of the river was made, in 1571, which shows the instability of tenure then prevailing for English fishers on the Bann. The second lessee was Captain William Piers—the same who, in June, 1567, as is recited in the Act 11th of Elizabeth, dug up Shane O'Neill's body to cut the head off. Piers was Seneschal of Carrickfergus Castle, and became Governor of Carrickfergus in 1583.

On the 24th March, 1571, he received a lease of: "The whole River of the Bann, in the North parts of Ireland, amongst the wild Irish, with the taking of salmon and all kinds of fish, To Hold for 20 years. Rent £10, or £40 in each year in which he shall peaceably enjoy the fishing. Fine £5" (S.P.I.). Froude (H.E.F., vol. x. p. 305) thus hits off the piscatorial situation: "Captain Piers, with his garrison at Knockfergus, and young Smith, who had taken shelter with him, did but hang to the shore like shell-fish, and

durst not venture beyond their walls." There was no covenant for " quiet enjoyment," and Piers settled in Westmeath, before 1591 (S.P.I., 416, 446).

In June, 1575, the Earl of Essex made Articles with Turlough (Lynagh) O'Neill, which declare : " He shall have part of the custom of Lough Foyle . . . and likewise of the Bann, provided he shall make agreement with the fishermen, according to the custom of the Bann."

Lord Deputy Sidney's description of Ulster in 1586 (C. MS., 436) speaks of the O'Cahan country thus : " His castles are Annagh and Limavady, near the salmon fishing, with the Castle of Coleraine and Castle Roe, where Turlough O'Neill keeps a constable and a ward to preserve his part of the fishing."

In May, 1586, just before Sorley Boy MacDonnell's surrender to Elizabeth, notes of instructions to Commissioners to arrange with Sorley contain the following : " Item, that the fishing of the Bann, the friary of Coleraine, with the lands thereunto belonging, be always excepted and reserved to her Majesty " (S.P.I., 69). No such reservation, however, appears to have been made in the treaty with Sorley of 18th June, 1586 (S.P.I., 83). This omission does not support a Royal title.

Marshall Bagnal's account in 1586 is :

" O'Cahan has upon the Bann, near the salmon fishing, two castles, one called Coleraine, defaced yet wardable ; the other Castle Roe, wherein Turlough O'Neill keepeth a constable and a ward to receive his part of the fishing."

Turlough O'Neill (1st July, 1587) petitioned Queen Elizabeth for an earldom, and that his Patent should include : " Such lands as are granted to him already by your Highness's Governors to his captaincy and chiefship. That is to say : from the Blackwater to the River of the Bann, with the governments belonging to O'Cahan and Maguire. . . . He desireth to have so much granted to him, in his Patent, of the fishing of the Bann and Lough Foyle as he now possesseth " (S.P.I., 375). Turlough's wishes for a Patent were left unsatisfied, and doubtless the MacDonnells would not have yielded up any part of the Bann.

Before the 21 years' lease to Piers expired, a third lease was issued, on the 10th March, 1586, to "Charles Russell, gent.," under Commission of the 17th January, 1584. It granted: "The whole river of the Bann in the North of Ireland, in the Province of Ulster, and the taking of salmon and all other fishing in the same, To Hold for 21 years." Rent £10, or £40 if peaceably enjoyed.

"Charles Russell, gent." must have been in competition with Lord Howard of Effingham for the prize; as, on the 14th September, 1587, a fourth lease (under the same Commission) was passed to "Charles Howard, Lord Howarde of Effingham, High Admiral of England," for 21 years, at £10 a year, or £40 if quietly enjoyed.

The latter leases are repugnant, but they show the anxiety to get some "farmer" for these troubled waters. Neither the Lord High Admiral nor the "gent" seems to have ventured into possession. The reason for this reluctance may be deduced from a letter of Sir Henry Wallop (then Treasurer at War) to Walsingham, dated 2nd April, 1588. He commends "the good service of Mr. Francis [Stafford, Governor of Carrickfergus] who hath sent the head of Ferdoro O'Cahan to the Lord Deputy. He was a lewd person and a continual annoyance to all such as came to the fishing of the Bann" (S.P.I., 509). The surprise of Ferdoro is spiritedly told by Stafford himself (p. 504). It took place at Moycosquin Abbey, on the night of the 18th March, 1588, and Stafford describes how his soldiers swam the Bann by night, and came in the dark where Ferdoro lay, and sounded the drum.

"Then Ferdoro, armed in his shirt of mail, and two swords in his hands, and his horsemen with him, retired into the butt end of a castle upon the loft. But your ensign cried for shot, and the shot shot up amongst them, and Ferdoro was struck by two bullets. And as good fortune was, there stood a ladder, and up gat your ensign, Heynes your sergeant, a very proper man, and one Davy Harrison, a tall man of Captain Henshaw's band; and when they were together there was leaping off the lofts and good slashing, and all the men killed, two only escaped. . . .

" If it may please your worship to inquire of Captain Warren, Captain Thornton, and the merchants of Dublin, which have used to fish the Bann, what Ferdoro was and his conditions, I hope it will be judged that there could not be a more notorious villain killed, and such a one as at all time would use most unreverend and undecent speeches of her Majesty, and the principal man that did disturb continually her subjects with murders and outrageous exactions when they came to fish the Bann. I have sent the head by your ensign's boy and mine own to Dublin, beseeching you to present the same to my Lord Deputy " (S.P.I., 503).

This headless O'Cahan was a son of the Manus with whom Henry VIII. made the treaty in 1543, and ancestor to Donal Ballagh O'Cahan, whom Chichester set on to dispute the Bann fishery with Hugh O'Neill in 1607. The latter O'Cahan (who lay in the Tower while Davies argued against Sir Randal MacDonnell) had been promised (27th July, 1602) a grant for deserting O'Neill, which gave him : " The custody of the country of Kryne, alias O'Cahan's country, except . . . the river and fishings of the Bann." We have already mentioned that in the height of O'Neill's rebellion the last Bann lease was made (14th July, 1600), and, as usual, before the existing lease had expired. It was a " Demise to Sir William Godolphin " (then in arms against O'Neill) of : " The whole water or river of the Bann, in the Northern part of the Province of Ulster, and County of Antrim, and the fishing and taking of salmon and all other kinds of fish in the said water, with all the advantages, commodities and emoluments to the said water or river belonging, to hold for 21 years. Rent £10. And if it shall happen that Godolphin shall, in any year, peaceably, quietly and without interruption, exercise, have, and enjoy the fishing and taking of salmon in the water of the Bann, that then he shall pay £40 " (M., 562).

Such are the " pipe-rolls and surveys " which convinced Chichester and his chief judges that the Bann was a Royal Fishery and the " ancient inheritance of the Crown." The constantly recurring provision for a rent of £10, to be increased to £40 if the lessee shall in any year be allowed to

enjoy the fishing " peaceably," demonstrates that the Crown was unable to give possession, and that the leases merely formed part of the general plan for the reduction of Ulster, being made to tempt adventurous Englishmen to possess it by the strong hand. They were measures of conquest, and not grants by an owner enjoying title and able to confer it. Sir Randal MacDonnell, of course, could only take what the Crown had to give, and his Patent reserved to the King " three parts " of this fishery, and left the remainder to MacDonnell to make the best of.

The temper of the natives towards asserters of " sporting rights " on the Bann may be inferred from a letter of the Bishop of Derry (Montgomery) to Cecil, dated 1st July, 1607. Having described the O'Cahan country (now Derry) as 24 miles in length between Lough Foyle and the Bann, he pleads O'Cahan's claims against O'Neill in this wise : " By the confession of gentlemen of the first Plantation, who yet live here, they have put them oftener to their defence and fight than any enemy they had to do withal, not suffering them to cut a bough to build a cabin, without blows. . . . The O'Cahans have continued their possession in 22 lineal descents, as he is informed " (S.P.I., 216).

A letter from Captain Phillips (afterwards Sir Thomas) to Cecil, written from Toome—where the Bann issues from Lough Neagh (22nd February, 1604) is to the like effect : " He has kept almost two years the garrison in which he now remains, which, on his going thither, was one of the remotest and most dangerous places in the North." Chichester confirms this, telling Cecil (22nd February, 1604) : " He knows no country that better requires looking after, nor a better man than Phillips " (S.P.I., 140, 194).

In the face of such records, the pretence of a Royal Fishery in the Bann was as unreal as the learning employed by the Attorney-General to defeat Sir Randal MacDonnell's Patent. Fishing leases in such a country were mere " letters of marque," to warrant privateers to prey on the clansmen. They were not assertions of title to " profits a prendre," or " acts of ownership " in respect of property vested in the Crown.

In whom then were these waters under the Irish dynasts, Con, Turlough, and Hugh O'Neill, or their predecessors ? By the Brehon law they were held by clansmen and chiefs together. When the English law was imposed, and the Brehon code declared a " lewd custom " by Chichester and Davies, the owners on each side of Lough Neagh and the River Bann could claim moietively.

In no Act or document was Lough Neagh or the Bann alleged by the Crown to be the property of any individual chief, so as to have accrued to the King by attainder or forfeiture. There is no Irish dynast from whom it is pretended that Elizabeth or James I. derived title to the fisheries by confiscation, or from whom they escheated. The boundaries of the O'Neill territories do not embrace them, and their " metes and bounds " are as easily ascertained and are as well defined to-day, as they were in Tudor and Stuart reigns. The Patents to the chiefs, and the treaties made with them, remain on record in legal archives (S.P.I. 332-6, 505, 520).

Con O'Neill's Patent from Henry VIII. (1st October, 1542) is confined to Tyrone—which then included Derry. It grants Con, for the term of his life, the title of Earl of Tyrone, with remainder to " his son Matthew, otherwise Ferdoro O'Nele, and his heirs male forever ; with all the castles, manors, and lordships which he formerly possessed in Tyrone ; to hold of the King by knight's service upon the following conditions : that he shall change the name of O'Neyle to such as the King shall please to give him ; that he shall use the English language, cultivate the lands assigned to him by the King, impose no cess upon his tenants, obey the laws, and accompany the Lord Deputy to hostings ; not aid or succour the King's enemies or rebels, and hold his lands by one knight's fee " (P. and C.R., 85).

The treaty with Shane O'Neill also affects Tyrone only. It was made on 18th November, 1563, as follows :

"Articles of agreement between Sir Thomas Cusake, knight, one of the Privy Council, and Shane O'Nele. Her Majesty receives him to her gracious favour, and pardons all his offences ; he shall remain captain and Governor of his

territory of Tirone, and shall have the name and title of O'Nele, and all the jurisdiction and pre-eminences which his ancestors possessed, with the service and homage of the lords and captains called 'Urraughts,' and other the chieftains of the O'Nele country, and he shall be created Earl of Tyrone" (P. and C.R., 485).

The treaty with Turlough O'Neill, upon Shane's death (two years before the Act 11th Elizabeth), makes him formally renounce all claim on lands in Antrim and Down, some of which had been invaded by Shane. It is dated 6th September, 1566, and runs :

"Treaty between Sir Henry Sidney, Lord Deputy, and Terence O'Neile, principal Captain of Tyrone. The Lord Deputy nominates him captain and ruler of all of his name, and of all the inhabitants within the limits of Tirone ; O'Neil renounces all claim upon Kilultagh and Claneboy (excepting that portion commonly called Glanconken, on the south of the Bann, the government and rule of which is hereby conferred on him) ; consents that all ecclesiastical lands within Tirone shall be free from impositions and exactions ; the city of Armagh and its franchises shall also be free from all impositions ; and O'Neil's officers or ministers shall not perform any office or function in his name within those limits ; he shall not exact or accept any rent or corporal service from Hugh M'Neill More, or any resident or inhabitant within the territory called the Fewes ; he undertakes not to confederate with the Scots or other strangers, or receive aid or support from them, but to the best of his power he will repel them as often as occasion shall be afforded to him ; he will appear and answer before her Majesty's Commissioners to hear and determine all country causes, and shall cause satisfaction to be rendered to those who may have been aggrieved ; he will not exact any service or subsidy from the Queen's 'galloglasses,' commonly called 'Clandonnels,' and he undertakes to place in the hands of the Deputy such hostage and security as shall be required. Signed, etc., at the camp before Cowlrain, 6th September, 1566" (P. and C.R., 502).

On 6th September, 1587, the Earl of Essex made a further

treaty with Turlough O'Neill, and his territory was defined to be " bounded on the East by the Bann, and on the West by the Country of Maguire "—now Fermanagh. (Opinion of Solicitor-General Wilbraham, S.P.I., 486).

The Patent to Hugh O'Neill, already quoted, is clearly confined to Tyrone (including Derry), and what makes the territorial division still clearer is a letter of Queen Elizabeth to the Deputy, 19th November, 1592, providing for the boundaries of the lands on the Eastern side of Lough Neagh held by the O'Neills of Claneboy. It declares :

" Where by your other letter of the 25th of October, addressed to our Council, it appears that for extinguishing the contention between Shane M'Brian [O'Neill] and his cousin, Neale Oge, touching lands in North Claneboy, they have submitted themselves, and have, by our grant, the country divided between them ; whereupon you have thought it convenient that Shane M'Brian, being the chief of the sept, should have three parts of the country, and Neale Oge a fourth part, and yet, nevertheless, that the Castle of Edendochkerry [Shane's Castle] with the lands thereunto belonging, should remain with us, for which they have both made such contention ; we perceive you have no warrant to make this division and grant, according to plot devised ; but we so well allow of this your purpose, to reduce those Irish into civility, by these presents we give you sufficient warrant to cause grants to be made to those two persons, after division shall be made (excepting the castle, to be held by us, with the territories thereof), reserving upon those grants several tenures of us by knight's service, a reasonable yearly rent, and ' risings out,' for our service, according to the quantity of the land, and as you and our Council shall think convenient ; and also to devise how some persons who have been subject to the Irish rule of the M'Brians may be allotted to hold of us, as you have very well devised, in the country of Monaghan, which we leave to your discretion to be performed " (P.C.R., 227). A Patent of the 12th March, 1606, confirming Shane MacBrian O'Neill in his estate, followed upon the Antrim Inquisition of the previous July. It confers " All lands bounded upon the west part of Lough

Neagh and the River Bann, and from said Lough . . . thence to the extreme north point of a lake called Lough Beg, parcel of the Bann . . . with all lands within the said territory which is so bounded, viz. towards and nigh the west part of the Bann, etc." (E., 281).

Riparian rights in parts of Lough Neagh and the Bann were thus recognised. It results from this grant that the whole waters cannot have been in the possession of any single individual.

So late as 1649, when Owen Roe O'Neill, after his victory at Benburb, propounded terms to Colonel Monke for the restoration of the O'Neill estates, the territory demanded (Article 7) was confined to Tyrone, Armagh, and Derry (M. MS., 180).

Thus there is no area recognised in any O'Neill Patent or writing which would include in its ambit Lough Neagh and the Bann, and no " office " comprising them can be found. So plain a fact was this, in Stuart times, that in the Antrim Inquisition of 1605 it was not alleged that more than the Eastern " moiety " of Lough Neagh, " towards Claneboy," vested in the Crown. " The said Inquisition deals with the eastern side of Lough Neagh only, and lands adjoining " confesses the archivist of the Chichesters (O'N. *v.* J., p. 98).

This difficulty was felt by Sir John Davies, who met it with the suggestion (adopted from Miler Magrath) that, as part of an inherent Royal prerogative, all the " great loughs " of Ireland were vested in the Crown. There is no other authority for this proposition, and it was negatived by the House of Lords in 1878 on the first trial of the Lough Neagh case (B. *v.* C.). As regards tidal waters, no grant of a " several fishery " therein subsequent to Magna Charta could validly be made by the Crown, unless, prior to Magna Charta, a grant therein had existed. The coming of the Normans into Ireland did not take place for over a hundred years after Magna Charta.

The case of the " Royal fishery of the Bann," therefore, when examined in the light of the motives of those concerned in it, and the evidence adduced in support of the decision, can only be regarded as a travesty of justice. It

was got up, heard, and tried before the fabricators of the Wakeman, Irelande and Bassett Patents, who had robbed the Crown, in their own corrupt interest, of the very fishery which their decision purported partly to restore. It bears the further taint, which indelibly attaches to the other Star Chamber decision of " O'Cahan *v.* O'Neill," that the presiding Judge was personally interested in the result.

The wrong done under it to Sir Randal MacDonnell by Chichester was redressed in the succeeding reign.

CHAPTER XXII.

THE MYSTERY OF JOHN WAKEMAN.

"THOMAS IRELANDE, Merchant, of London," the putative father of the grant of Lough Neagh and the non-tidal Bann, was, as we have shown, the keeper of a tavern in a London alley, during Elizabeth's reign, "where Scotsmen used to lie." The Scots were then, by Statute, the "ancient enemies" of the English, yet their "house of call" in the metropolis was maintained by an owner so patriotic and profuse that, when James I. came to the throne, the host of the "Half Moon" in Bow Lane presented £1,678 6s. 8d. to the Exchequer. Having, in consequence, been awarded a Patent entitling him to lands in Ireland worth £100, he assigned the benefit of it to his countryman, Mr. James Hamilton, without getting (as far as can be traced) a bawbee in return. This done, Thomas Irelande makes his bow to history and disappears from the stage. His only monument is a mouldy entry in the Patent Rolls.

In contrast with the elusive figure of the Half-Moonlighter of Bow Lane, the grasping lineaments of Mr. John Wakeman, of Beckford, Gloucestershire, arrest us as he strides sternly out of the past. The description of him in Devonshire's will as "my servant" imports no menial office. The meaning of the word has since changed. Wakeman, as has been shown, was born to some estate. Six months before receiving the second Patent in respect of his grant of £100 a year, he was given the Lordship of Taynton, Gloucester (6th August, 1603), along with Sir John Weston (C.S.P., Dom. 27), without any reason being stated. His operations in Irish real estate warrant him to have been a fearless adventurer.

Apparently he had only newly come from Morocco in 1603, where he was a merchant under the patronage of the Emperor. This appears from a Petition in 1602 to Cecil from Richard Wakeman, "in the behalf of John Wakeman his brother, a Barbary merchant, and now there resident."

Richard's petition sets forth: "That John was employed, by the special command of the Emperor of Moroccos, to buy for him certain merchandise of English men of war there arrived;

"Part of which merchandises have been since claimed here in England, by certain Frenchmen who labour by divers suits and vexations, as also by attaching the said John Wakeman's goods, to charge him, and recover the same, against all equity;

"Whereupon the said John Wakeman hath been driven to procure Letters of Testimonial for his discharge, both under the hands of sundry merchants of those parts (here extant) as also a Letter from his Highness to the Queen, herewith to be delivered to your honour, signifying Wakeman's employment to have been by his special commandment, and that to the Emperor's only use.

"As he did buy those merchandise only upon the King's command (whose authority he neither could nor durst disobey): And for that the French, which challenge those goods, have the master of the ship which brought them into Barbary now in durance;

"It may therefore please your honour to vouchsafe the receipt and delivery of the said letters of the Emperor to her Majesty; and that, through your honour's favour, the Court of Admiralty may take notice of the said letters; that your suppliant's said brother may be dismissed the said Court; and not unjustly vexed by the challengers of those goods." (Hd. MS., 1910, p. 578).

Wakeman, therefore, could make use of an Emperor's letter as well as a King's. Never did so strange a chance in Irish history befall as that a Barbary trader and a Scottish innkeeper should make the twain by which was snatched from native hold, the pearl of the patrimony of the O'Neills.

A memorandum, found among Hamilton's papers (H. MS.,

29) gives a list of part of the spoil harvested under the Wakeman and Irelande Letters.

It was drawn up by Deputy St. John in 1618 by command of the King, when at length Hamilton came to be interrogated for his share in the frauds. This investigation, so remarkable in its bearing on the lack of Royal authority for the Patents, will be dealt with in order of date. The many omissions from the list exhibit the fact that no register can have been kept by Chichester of the Patents he issued.

St. John's memorandum was as follows :

" The Patents passed to Mr. James Hamilton upon Thomas Irelande's Letter :

" 1. Patent, 20th July, 1605, of the Manor of Moygare, and other lands, etc.

" 2. Patent, 14th February, 1605-6, of lands in the County of Antrim, etc. [Lough Neagh and the Bann.]

" 3. Patent, 13th March, 1605-6, of rents of assize in Trim, and others.

" 4. Patent, 17th March, 1605-6, of the Castle of Moybore in Westmeath, and other lands, etc.

" 5. Patent, 13th May, 1608, of certain lands in the County of Wexford, and others, etc.

" The Patents passed upon John Wakeman's Letter :

" 6. Patent, 28th February, 1603-4. [St. Mary's Abbey.]

" 7. Patent, 2nd March, 1605-6, of the [tidal] fishing of the Bann, etc.

" 8. Patent, 11th April, 1606, of the Customs.

" 9. Patent passed to Sir James Hamilton and Sir James Carroll, Knights, assignees to John Wakeman, 23rd February, 1609-10, of St. Marie Abay.

" 10. Patent, 5th November, 1605, of Con O'Neill's lands by special Letter.

" 11. The last Patent of the Customs aforesaid upon another Letter, the date whereof is about 1611, which you may see in the enrolment of the Chancery."

Such a score might well make even a 17th century undertaker blush, but many Patents are omitted. The dates of seven other grants in which Hamilton was interested can be traced, viz. 5th March, 1603-4; 18th May, 1606; 5th

December, 1609; 29th September, 1610; December, 1613. Two of these, viz. 5th December, 1621; and 19th December, 1622, were secured after 1618, when the "Scot" was challenged by the Crown.

Their value may be judged from the fact that in the Counties of Down and Antrim alone, the grants included 14 monastic properties, viz:

Abbey of Moyvilla.
Abbey of Cumber.
Abbey of Bangor.
Black Abbey.
Grey Abbey.
Priory of Moylisk.
Priory of Hollywood.
Priory of Newtown.
Priory of Inche.
Monastery of St. Patrick, Down.
Monastery of Saule.
Rectory of Grange.
Rectory of Ballyrickard.
House of the Order of St. Francis.

(P.U., 392).

St. John's list shows that the King's Letters were operated on five times to satisfy Wakeman's claim of £100 a year, and five times to discharge a like grant to Irelande. Yet the harpies who preyed on the Irish Establishment of the Crown resorted to the Wakeman legend again on 26th May, 1609. They set up the pretence that a grant was needed to meet the debts of the late Earl of Devonshire. They, therefore, prepared, and secured the King's signature to, the following letter:

"Whereas heretofore, for certain considerations us moving, we were graciously pleased to give warrant unto the late Earl of Devonshire, our late Deputy there, for passing Letters Patent, under the Great Seal of that our Realm aforesaid, of £100 of our lands and hereditaments in fee simple to John Wakeman, esq., his heirs and assigns for ever, whereof the Monastery or Abbey of Saint Mary Abbey, near Dublin, with all lands, rents, tenements, and hereditaments whatsoever thereunto belonging, within our said Realm, are

mentioned to be passed by Letters Patent as parcel of the said £100 to the said John Wakeman in fee simple, which he hath also sold (as we are informed) for certain sums of money, whereof part is yet to be received for payment of the Earl's debts, which being refused to be paid by the same Wakeman's assigns in respect that some question is made of the validity of the said Letters Patent:

"We are therefore graciously pleased, at the humble suit of our right trusty and well-beloved cousin, Henry, Earl of Southampton, one of the overseers of the said Earl of Devonshire's last Will, and we do hereby authorise and require you to make a grant or grants from us, our heirs and successors, in due form of law, under the Great Seal of that our Realm, unto the said Wakeman, his heirs and assigns, or to such person or persons, his and their heirs and assigns for ever, in fee simple, as he the said John Wakeman, his heirs and assigns, shall nominate and appoint, of the said Monastery or Abbey, called St. Mary Abbey, near Dublin, and of all the lands, tenements, rents, services and hereditaments whatsoever thereunto belonging or any wise appertaining or reputed to be parcel thereof," etc. (S.P.I. 207, and James I., vol. i. 358).

On this Letter, however, no Patent was issued—probably because it was too plainly ear-marked as one destined to pay off the debts of the late Earl of Devonshire. Moreover, it seems likely that it was objected to, as injurious to the Earl of Ormonde, who held a lease of portion of St. Mary's Abbey lands, which the conspirators had been baffled in acquiring under the original King's Letter of 1603. So a plot to cheat Ormonde was compassed by means of another King's Letter, signeted 29th September, 1610. The Earl of Ormonde was a powerful antagonist to encounter, and was Lord High Treasurer of Ireland from 26th August, 1559, until his death in 1616 (L.N. 41, pt. 2). In his case direct knowledge can be imputed to Chichester as to what occurred, for in a letter of 4th July, 1606, he tells Cecil he had "acquainted him since with the state of the Earl of Ormonde's and Viscount Butler's lands, much whereof lies open, and gives occasion for such as have Books to fill, to aim at it.

" In respect of the nobleness of his House and former services I will suffer nothing to pass which shall be prejudicial to him until I shall understand what success the young Lord who is daily expected by the Earl receives there " (S.P.I., 511). Now, the frame of the King's Letter was designed to favour a raid on the Earl of Ormonde's estate.

" James Rex—Right trusty and well-beloved, we greet you well, and let you to wit that we are graciously pleased, at the humble suit of our right trusty and right well-beloved cousin, Henry, Earl of Southampton, and for other good causes and considerations us moving, and we do hereby authorise and require you to make a grant or grants from us, our heirs and successors, in due form of law, under the Great Seal of that our Realm, unto John Wakeman, esq., his heirs and assigns, or to such person or persons, his or their heirs and assigns, for ever in fee simple, as he the said John Wakeman, his heirs and assigns shall nominate and appoint, of the late dissolved Monastery or Abbey called Saint Mary Abbey, excepting only to us, our heirs and successors, such lands and hereditaments as have been granted in fee simple or fee farm by our late dear sister Queen Elizabeth, before the eight and twentieth day of August, in the seventeenth year of her reign (1575), and also excepting such lands as have been passed for years by the late said Queen by Letters Patent to our right trusty and well-beloved cousin, Thomas, Earl of Ormonde, before the said eighth and twentieth day of August in the seventeenth year of her reign. . . .

" With such favourable clauses to be inserted in our said grant for avoidings of any questions that may hereafter arise as the said Wakeman, his heirs and assigns, or such person as he shall nominate, may take the full benefit of this our gracious meaning towards them " (S.P.I., 465).

The original of this document is endorsed by Chichester with his own hand : " Re the 14th of Feb.," showing how he linked it up in his own mind with the Patent of the Bann, issued 14th February, 1605-6.

Ormonde, however, had no patent of lands " before " 28th August, 1575. He had a patent " of " that day, and the

King's Letter was framed to overreach him—being so drawn as to only except lands granted " before " 28th August, 1575. Ormonde was then an old man. Years after his death the fraud, as we shall see, was condemned in the Courts of Law.

Of course the Earl of Southampton, the patron of Shakespeare, the lover of the drama and of art, to whom some of the sonnets were addressed, was a rich man, and cannot have been privy to the Wakeman frauds.

What his relations were with Wakeman, or what knowledge he had of the Patents, cannot be elucidated. That Wakeman had some connection with the Earl of Southampton is independently shown by a MS. found in the Earl of Ancaster's collection. From this it appears that on the 14th June, 1613, a " Recusant," John Cotton, of Suburton, Southamptonshire, was brought before Abbot, Archbishop of Canterbury, for writing a book against James I. In his deposition Cotton said " he went to Lord Southampton's by water, landed at the Temple Stairs, and went to Mr. Watson's house in Chancery Lane, where his brother, Richard Cotton, and Mr. Wakeman were. Mr. Wakeman and others went with him to Lord Southampton's house." The prisoner on the 18th June, 1613, deposed : " Since his coming to London, Mr. Wakeman, or some in my Lord Southampton's house, have told me of the book " [against the King]. (H. MS. C., 1907 ; p. 363-5).

Further " Wakeman " grants have now to be recorded. In 1609-10 Chichester put forth a new Patent issued jointly to Hamilton and Sir James Carroll, as assignees of Wakeman, and gave away lands of St. Mary's Abbey worth £2,000 a year.

On the 25th June, 1611, Chichester got another King's Letter in favour of Hamilton, on foot of the old Wakeman Letter of 1603, viz. :

" Had formerly granted to John Wakeman certain customs, etc., in Ulster, for which a sum of money has been paid by Mr. James Hamilton. Directs that a grant be passed of the same to Hamilton ; but, if the grant appear prejudicial to the Plantation of Ulster it shall be stayed until his Majesty is further advised " (S.P.I., 86). This letter is apparently

the same as that preserved in the Earl of Ross's collection (H. MS. C., 1874, p. 217).

Thus up to 1611, under the Wakeman letter, authorising a grant of £100 a year on account of " money paid to a well-deserving subject within Scotland," the banditti seized and distributed among themselves several vast estates (as well as monastery plunder) worth £3,000 a year, the tidal fishing of the Bann, and the customs of Ulster seaports. In spite of these enormities Wakeman's inexhaustible Letter was again resorted to, and used in 1614.

On that occasion the trick would, perhaps, not have succeeded but for a visit Chichester made to London. On the 31st March, 1614, the Deputy, in obedience to the King's command to report on Irish affairs (S.P.E., 228, 244), arrived at Court. There he simulated poverty to cloak his acquisitions, for on his departure a courtier wrote (14th July, 1614): "The Deputy of Ireland is returned, not overcharged with money."

When in London Chichester discerned that the Wakeman legend could still be successfully worked. He asked Archbishop Jones, his trusty Lord Chancellor, to address the English Surveyor-General, repeating the stale pretence that Wakeman's claim to the £100 a year had never been satisfied since 1603. The ignorance displayed by James I.'s Councillors as to the scandals connected with Irish Patents provokes the suspicion that it partook of complicity in their manufacture. Changes of personnel, perhaps, favoured the Deputy's procedure. Cecil was dead, and his successors probably thought that no traffic in Irish bogs greatly mattered. Anyhow, the reply sent (30th June, 1614) by the Lords of the Council adopted and re-minted the fabrications of Chichester:

" Have been informed by letter from the Lord Chancellor and others to Sir John Denham, that his Majesty, some nine years since, granted lands in Ireland in fee-simple, to the value of £100 a year, to John Wakeman, who was a trustee for the late Earl of Devonshire. After his death, Wakeman sold them to Sir James Hamilton and Sir James Carroll [Vice-Treasurer of Ireland]. Divers parcels of St. Mary's

Abbey were inserted as part of the £100 a year, to the value of £42 12s., and the said Hamilton and Carroll are now claiming other portions of St. Mary's Abbey, such as will make up their grant to £140 7s. 1d., and they allege that such was his Majesty's intention.

" The Lord Deputy is to call in the aid of the Chief Baron, Chancellor, and such other of the Judges as he shall see fit, and to examine his Majesty's Letter for the grant, and, according to their construction of the said Letter, the lands over and above the value of £42 12s. are either to be passed to the said Hamilton and Carroll or to be continued in charge, as part of the revenue of the Crown " (S.P.I., 486).

The fable that Wakeman sold after Devonshire's death, and that his assignees got less than the £100 a year authorised by the Royal warrant, was given extra garnish. With pretty pleasantry it was also ingeniously added that when King James said " £100 " in 1603, it should be construed in 1614 to mean " £140 7s. 1d." So the Privy Council instructed the Deputy to " call in the aid of the Lord Chancellor " (the " rascal Jones," who warranted the falsehoods) and gave him discretion to make further gifts to Hamilton and Carroll.

Even after Chichester ceased to be Deputy the wellspring of this fecund Letter did not run dry, for on the 18th May, 1620, there was made a confirmatory grant to Sir James Hamilton " of so much of the dissolved monastery of St. Mary's Abbey as amounts to £100 Irish, which has been acquired by him from John Wakeman and his heirs " (C.P.R., James I., 509).

Neglect and disorder in the custody and preservation of the records facilitated plundering. In 1603-4 a " Royal Memorial for the Government of Ireland " complains that " many records are either embezzled or *rated*, and yet not well known in whose time, or by whose negligence, and many of the records themselves carried away and kept in private houses." Corruption nests in irregularity.

To improve matters would not have suited Chichester, whom looseness favoured, and in February, 1609, Cecil warned him : " Information having been given by Sir

Humfrey Winch, Chief Justice, of the urgent necessity for providing fitting depositaries for the safe keeping of records of attainders, inquisitions, surveys, and other public documents for want of which they have remained in the custody of officers in their private houses, you are to take order that a fit place be assigned and proper receptacles provided for the safe custody of the public records " (S.P.I., 148).

Chichester's recklessness in 1614 can only be understood by recalling the triumphant political position in which he was then entrenched. Well might he regard the situation as assured, and his audacity justifiable. In appearance he seemed impregnable from attack. His manœuvres had brought together a Parliament in which he commanded a subservient majority. He had just been ennobled by James I. for his skill in packing and manipulating that body. By its Acts he intended to validate his titles and cover his misdeeds. He had defeated powerful enemies in an electoral controversy which ranged the King on his side. He stood at the pinnacle of his career, flushed with triumph. The overthrow of the ancient code of Gaelic law was already placed to his credit. To that he now added the disruption of the Anglo-Norman Constitution, which had prevailed in Ireland, to regulate the assembly of its Parliament, since the invasion.

By the aid of a packed assembly he had done the King's work in legalising the forfeiture of Ulster. In return he intended to further his own ends, by securing from it Acts which would sanction anything in his procedure or estate, that suggested a flaw, or left a loophole for challenge. The light of victory shone around him in peace as in war. It was, however, a blaze that was soon to be quenched in humiliation and exposure. A sudden whiff of Royal ill-humour thwarted Chichester's designs to utilise for his private advantage the Parliament he had debauched. Thus the most dazzling success of his life became the forerunner of his downfall.

CHAPTER XXIII.

PACKING A PARLIAMENT.

When the Plantation was set going, it became necessary that a Parliament should be summoned to legalise the confiscations. James I. had reigned nine years without assembling the Irish Legislature, but the Ulster planters felt uneasy in their possessions at the absence of title, and the Deputy had his own ends to further. Besides, fresh incomers would be discouraged unless their legal right was made clear, so the Government felt that a statutory obliteration must be devised, to sponge away the title of the ancient proprietors. With the Chieftains prostrated, the clansmen had also fallen. Indeed, the poorer natives on being warned to quit their lands gave little trouble. So quietly did they move away that Chichester and his Council were amazed at their resignation (P.U.). They drove their cattle to some fastness, far removed from the intruders, and prayed for the reinstatement of their exiled lords, whose triumphant return they deemed a certainty. Not for thirty years did the landless people rise in arms to wrest back their old possessions.

The King was much edified by this obedience to his Proclamations, and directed a Parliament to be called to legalise the attainder of the fugitive Earls. Chichester, however, knew that, if the Commons of Ireland were summoned on the olden basis, the majority would be Catholic, and it was one of the perversities of persons of that religion that they were ill-disposed towards any plan for conferring their property on strangers. The Deputy's designs, moreover, included a sectarian as well as a territorial uprooting, and for this a "Popish" Legislature was no fit instrument. Seven-

teen new counties had been formed since the previous Parliament was summoned, and the representation of conquered Ulster was a delicate problem.

Calculation had therefore to be made so that a Protestant Legislature might be bestowed on a Catholic country. By no manipulation of the franchise could this be wrought. Voters lists of the modern kind did not exist. To raise the qualification of freeholders, as was done in England by Henry VII., would have been ineffectual. Some dignified expedient was required to pack a Parliament in a statesmanlike way.

A plan at length was hit upon, and this proved so efficacious that it poisoned the Irish representative system during the rest of its existence, and brought it finally to a dishonoured death in a compost of corruption. Chichester framed that great device, and its merits withstood the test of time. This was the issue of Royal Charters for the creation of new Corporations, with the right to elect members of Parliament. Thereby a dozen "Batchmen" in forty villages, nominated by upstart confiscators, were empowered to intrude some four score members on an ancient Legislature. Their venal votes swamped the influence and drowned the voices of men of rank and lineage on every question dear to their hearts and sacred to their souls.

In the wilds of Ulster where the wolf still roamed, or where but yesterday the Brehon gave the Gaelic law, hamlets of cowering settlers were dubbed "Corporations" and their "Freemen" endowed with the privilege of sending a brace of "burgesses" as M.P.'s to Dublin.

Lest Chichester's wisdom should lack anything in that behalf, Lord Carew, the ex-Deputy of 1603-4, was despatched by the Throne to aid him with prudent counsel, at £5 per diem and all expenses found (C. MS., v. i. p. lvii). Carew remained in Ireland from 11th July to 21st October, 1611, to supervise operations. The plan for stuffing the Legislature with bogus Representatives was so thorough that, a few years later, every Catholic (however loyal) was excluded from both Houses; and, in the century which followed, the successors of Chichester's nominees were facile enough to

accept bribes to extinguish the Senate altogether. When the "Rotten Corporations" had served their turn they were themselves abolished as a public nuisance by the Imperial Parliament in 1840.

Drafts of the proposed "boroughs" of 1611 drawn by Davies, others settled by Chichester, and all endorsed by Lord Carew, illuminate the State Papers. Months were taken up in maturing the scheme, and reports on its probable results were invited from provincial Governors. Soldiers, freed from the stratagems of war, became election-agents, and a canvass of constituencies began, not on the shrunken scale of a single contest, but over the vast field of a National manipulation.

In December, 1611, dignified Sir Oliver St. John—afterwards Lord Deputy and then Vice-President of Connaught—reported to the central electioneering manager, Chichester, on the quality of the "Knights and Burgesses to be sent to the Parliament out of the Government of Connaught." Most statistical is St. John. One by one he takes up the old and new constituencies to set forth a religious census:

"Counties.—Roscoman, Galway, Mayo, Sligo, Letrim. I cannot assure myself of these five counties of more than 2 Protestants.

"Ancient boroughs.—Galway, Athenry. No hope of any Protestants from these.

"A new borough.—Athlone. There will be sent 2 Protestants.

"Boroughs to be erected.—Roscoman, Carra Drumrisk, Sligo, Castlebar. All these will send Protestants, unless some doubt be of Sligo, whereunto upon better advice may be added.

"To be newly erected.—Loughrea. Being an ancient walled town and corporation, and the Earl's principal seat, peradventure they will send Papists, for it will gratify the opinion of partiality in erecting the new boroughs.

"Tuam. The Archbishop's chief seat, which will send Protestants.

"Boyle, Ballinaslo. The one being Sir John Kinge's, the

other Malby Brabazon's, both places well inhabited, and will send Protestants.

" Ballinafad, Burtesowte. Being the King's fortress and may well be made boroughs and will send Protestants.

" So I hope the Government of Conaght will send to the Parliament 22 Protestants for 14 Papists " (C. MS., 145).

This was a smart return for a province where the Papists were 40 to 1.

The " Certificate " of the Vice-President of Munster to the Deputy, was to the like effect. He opined :

. . . " For the old boroughs, there is hope to get one burgess returned out of each of the towns of Youghal, Dungarvan and Dinglecuish, and all the rest desperate.

" For the intended corporations, if they be enabled by charter to send burgesses to Parliament, I am sure they will be wrought to return those I have named, or any other the State shall appoint, and the number of them will appear by the underwritten certificate. . . .—Limerick, Waterford, Cork. No hope of any Protestant. Burgesses for the five ancient boroughs.—Kinsale, Kilmalock, Clonmell, Cashal, Fethard. —No hope of any conformable.

" Burgesses for the three towns of Youghal, Dungarvan, Dingley Cuish. In these three towns there is hope one conformable man at the least will be chosen ; for Youghal, Robert Trynt ; for Dungarvan, Richard Smyth ; for Dingley Cuish, Stephen Ryce or John Ryce, both burgesses and Protestants.

" Burgesses for the four new boroughs to be erected—

" Tallow—Edward Harris, Chief Justice of Munster, Sir Parr Lane.

" Mallow—Sir Francis Kingsmill if Sir John Jephson be knight of the shire ; otherwise Sir John ; and Richard Aldworth.

" Baltimore—Henry Skipworth, John Fardwell, Attorney of Munster.

" Lismore—Sir Francis Slyngsbye, knt., Charles Coote.

" Burgesses for the three new boroughs to be erected—

" Tralee—Arthur Denny, Jenkyn Conway.

" Ennis—I leave the Earl of Thomond to certifie.

" Askeaton—Edmond Drew, Roger Pyne.

" Bandon Bridge—Henry Gosnold, Second Justice of Munster ; Edward Beecher, Escheator of Munster.

" And so out of the counties by this computation there may be ten knights. Out of the old corporations three burgesses, and out of the 8 new to be created, sixteen. If it be so, the Protestants will exceed them six voices " (C. MS., 136).

Thus not only the Constituencies but the Representatives were provided by this forethought. Such conveniencies were improved upon as regards Ulster, from which the main strength of Chichester's Parliamentary reinforcements were brigaded. The memorandum of Sir John Davies to Lord Carew avows :

" In 27 Eliz. when the last Parliament was held in Ireland, there were but 26 cities and boroughs which sent citizens and burgesses to Parliament ; but in the next Parliament the number of borough towns will be doubled, for his Majesty has created some boroughs since his reign, and will be pleased to erect 25 corporate towns more in the escheated lands of Ulster, all which shall send burgesses to the Parliament, and be planted with Protestants and well-affected subjects." (C. MS., 189).

The Attorney-General then appended a carefully prepared list, but his calculations proved too modest, for instead of merely doubling the " Boroughs," as he originally proposed, some two score had to be created so as effectively to adulterate the Legislature. Chichester also made out a list, and to it set this conclusion :

" And so the Lower House consisting of 218 knights and burgesses, we may expect 123 Protestants, and then we shall exceed them by 28 voices " (C. MS., 135).

Lord Carew endorsed these calculations :

. . . " The Higher House consists of lords spiritual and temporal, 44. The Lower House in knights of shires, 66 ; in burgesses, 152 ; in all, 218. The numbers in both Houses amount unto 262 " (C. MS., 134).

This precious " Parliament " met on the 18th May, 1613, and was dissolved 24th October, 1615.

The members' wages were : for a Knight, 13s. 4d., a

Citizen, 10s., and a Burgess, 6s. 8d. It sat 149 days, and the outlay for the lot was £223 4s. 0d. (T.C.D. MS., F. 3-1, p. 489-502).

Lord Carew's "Brief Relation of the Passages in the Parliament" records a protest of certain Peers in November, 1612, inveighing against the new corporations (C. MS., 280).

The day before Parliament assembled, a Petition from ten Catholic Lords was sent to the Deputy questioning the King's power to erect new corporations. It complains:

"That new corporations are created, not only within the late Plantation, but also elsewhere, and many (if not most) of these since the summons of the Parliament. And clerks and others here, who have little or no estate in the kingdom, and in special within any of the corporations, are to be returned as burgesses to have voice and place in Parliament.

"Secondly. The preposterous courses held by sheriffs and others of note, in the election of knights, citizens, and burgesses, the rejecting of burgesses returned by ancient boroughs, and many of the ancient boroughs omitted, much to the amazement and discontent of the natives and inhabitants, who claimed by their right a better usage and fairer carriage in matters of this quality."

Chichester's answer was:

. . . "The new corporations were made by the King's express order, thinking it would be injurious to his good subjects of the new plantations in Ulster, and other plantations in the realm, to exclude them from having voices in his present assembly of Parliament, since the affairs treated therein concern the whole realm and their posterities. . . . The election of quality attending the State, and of clerks likewise, is no new thing; neither was it ever hitherto excepted against. The House is to judge of the miscarriages of the sheriffs and abuses committed in the elections. Touching the ancient boroughs enabled to send burgesses, none are omitted to my knowledge. If any be, name them, and they shall have a writ of summons" (C. MS., 264).

On the 19th May, 1613, the Lords petitioned his Majesty, in discontent at the new corporations, calling them *Tituli*

sine re, et figmenta sine rebus, and speaking with contempt of their " burgesses."

On the same day Commoners wrote to the like effect.

On 21st May, 1613, other Commoners petitioned the Deputy, demanding that certain burgesses be sequestrated from the House. The Lords again complained, and on 25th May the " Recusant " Commons demanded a view of the King's Letter for making new corporations. Next day they refused to serve until certain knights and burgesses were turned out of Parliament, and the Lords made a similar remonstrance (C. MS., 278).

There was a violent struggle for the appointment of Speaker. Although the Gaelic natives were practically excluded from the Lower House, their Anglo-Norman co-religionists hotly contested Chichester's arrangement to seat his Attorney-General as Speaker. The Catholic Palesmen put forward Sir John Everard, who had forfeited a Judgeship rather than take the oath of apostasy. But Davies, of course, was " counted in " by his henchmen from the " corporations " he had manufactured.

The turmoil caused by the triumph of his industry was, however, so great that Chichester adjourned the Parliament, and advised the " Recusants " to repair to London to petition the King. As the scandal against which their protest was levelled had been organised by his Majesty, the project of a visit to King James to secure redress, relieves the tragic scene of a nation's downfall by a background of comedy.

CHAPTER XXIV.

THE RECUSANTS' PETITION.

Worse than futile was the pilgrimage of the Anglo-Catholic Lords of the Pale to London. They, with sundry Commoners and their lawyers, sped over to protest to King James against the packing of Parliament. For their pains, some went to the Tower, others to the Fleet Prison, and the rest were rebuked and sent home. The charge of making boroughs was disposed of by the King with brisk humour. "The more the merrier," quoth he.

They presented what was styled the "Recusants' Petition," alleging nineteen "disorders," and of these some retain points of interest. One complaint was that: "Many causes between party and party, which are properly determinable by ordinary courts of law, are decided at the Council-table. . . . And in deciding of such causes at the Council-table, the same being put to the voice (as the course there is) the martial men, being the greatest number, having lesser skill, may overrule the judges in law matter" (D.C.H., 272). The 17th "disorder" was: "Escheated land of great value, surveyed at very low rates, whereby the King's revenue is impaired; and divers who had not one foot of that kingdom within these ten years, are now compared to three or four of the ancient, for revenue."

Chichester answered the "Recusants'" charges at length, but, when dealing with No. 17, was careful to prefix his reply with the heading "The Surveyor General makes this answer," although it concerned himself very nearly. The "Surveyor General" was Sir Thomas Ridgeway, who was "discharged from his office" when Chichester

was recalled in 1615 (S.P.E., 425). Ridgeway's "answer," however, was evidently the Deputy's composition, as its falsehoods bespeak his pen. It set forth :

"No surveys of any moment have fallen into his hands except the Claneboys, commanded by the King, at a certain rate. . . . Touching the small concealments that sometimes occur, they are, for the most part, for the present possessors natives . . . whereunto the King has many ways showed a prepension ; and therefore, the King having no title, they are the easier rated, which is every day vouched, and not done in secret ; and the benefit of those kind of lands generally runs to the nobility of this kingdom, as the Earl of Kildare, etc., and others, by special letters from the King, and some others of merit and place here, for whom the King writes, as Sir Henry Brunker, Sir Oliver Lambert, Sir James Fullerton, John Wakeman, Sir George Thornton, and such others, by the King's special letters, no other claimant here having benefit by any late grants of the King's lands save what they have as undertakers in Ulster and Munster" (S.P.I., 1613, p. 379).

No hint is given of the grants by which Chichester profited ; but he was not afraid to cite the name of John Wakeman, because, since compensation had been paid to buy back the tidal Bann, his Patent had become notorious, although not the facts connected with it. The allegation as to "no other claimants here having any benefit by any late grants" suppresses the names of Thomas Irelande and James Hamilton. Thus, as late as 1613, Chichester withheld from King James his parchments of Lough Neagh.

The admission of the Surveyor-General in connection with the territory of the Claneboys, of which Lough Neagh is the western boundary, that "the King has no title" is very significant. It is a confession made by the officer of State specially concerned to deal with Crown property. Sir Thomas Ridgeway does not pretend that the Act 11th Elizabeth furnished the King with a title. He knew that in the Claneboys the settlers were inducted by force, according as the natives were driven out. Possession afterwards gave them a title, wherever it was taken, but nobody seized

Lough Neagh and obtained "prehension" of it, so as to cure by length of ownership the faultiness or lack of parchment.

Cecil died in 1612; and Chichester was thus deprived of his protector at Court. Cecil's rivals had begun to criticise the Deputy and his patron. Thus the Earl of Northampton, writing of his methods to Rochester, speaks of: "The perplexity in Irish affairs, owing to the inconsistent steps taken by the Deputy to vindicate the King's title to dispose of the lands" (S.P.E., 1451). It is in this letter the complaint against Cecil (already quoted) occurs: "The little lord made his own Cabinet the treasury of the State's whole evidences and intelligence."

The Deputy revived his popularity at Court by packing the Irish Parliament. The complaints of the plundered "Recusants" riveted him in Royal favour. He despatched letters to London, for exhibition to the King, in answer to their charges, crammed with falsehoods. On the 19th February, 1612-13, he writes to Sir Humphrey May:

"You send me another friendly advertisement . . . of an information made to his Majesty by some that would thereby facilitate their own ends, how I do use to make frequent grants of concealed lands unto my own servants here. It is true that I have many good servants here, and my place requires it. There are not above two of them, to my remembrance, on whom I have yet bestowed any such thing . . . About the first or second year of my government here I was induced, for the discovery of the King's title and for experience sake in that kind, to grant a lease of 21 years unto Henry Perse, my secretary, and to another that gave me notice of the suit, of some £60 a year, or thereabouts, and that not without the counsel and advice of such as were then here with me in Commission. . . .

"Not long after that I granted the like suit to another servant of some £30 a year; but with this condition to them both: that they should not smother the King's titles, but prosecute them to effect within the space of three years. . . . For these four or five years last past, I have closed up my hands and done nothing in this kind but in the County

of Wexford . . . upon his Majesty's own direction, as in the behalf of the Earl of Kildare and Lord Burke, who had Books of £100 a year granted unto them. . . . I dare boldly avouch it, that none of my predecessors in this place have been more reserved in matters appertaining to his Majesty, or the vexation of the subject unjustly, than I have been in respect of benefits thereby made to myself, or my servants, or my nearest and dearest friends—insomuch that I often think their reward is like to be laid by in their own conscience only. . . .

" It is an inseparable property in governors to be maligned and complained of, howsoever they may endeavour to escape it. He that fears obloquy of tongues shall never accomplish anything worthy of commendation among the wise. My prayer shall be that men may do me no greater hurt nor to divert his Majesty's good opinion from me ; and that posterity at least may give everyone his just reward. . . . So I pray you to impart all this at some fit time or occasion of leisure unto his Majesty " (T.C.D. MS.).

In May, 1613, the Deputy submitted to the King notes of his services, among which were :

" Besides the cutting off many bad members and disloyal offenders in this land, I have sent away above 6,000 of the same inclination and profession unto the wars of Sweden, whereof but few are yet returned back, and this was an act of no small difficulty " (T.P., vol. iii. 120).

On the 13th May, 1613, his comment to Sir Humphrey May on the " Recusants' " Petition is :

" I assure you that the divel is the author of all accusations in their mouths. They deprave me with wonderful untruths . . . in the vespers of my services, and before the looked-for anthem of my Nunc Dimittis. . . . They thought some about his Majesty were to be corrupted with money " (T.C.D. MS.).

On the 6th June, 1613, his rage against his accusers foams savagely : " They would have Barrabas, and exclude Jesus " (D.C.H., 209).

On 8th November, 1613, Sir Humphrey May tells Secretary Annesley of Chichester's triumph :

"The Lord Deputy is in high favour for the prosperous beginning of the Irish Parliament" (C.C.P., 9). Three months later he was rewarded with a Peerage, and came to London to receive it on the 31st March, 1614 (S.P.E., 172, 228).

Then he got the packed Assembly in Dublin to pass an Act declaring that O'Neill and the Northern Chiefs, both dead and alive, should "stand and be adjudged convicted and attainted of high treason," and to have lost and forfeited to the Crown their territories, and that the Letters Patent made to them were void (11, 12, and 13 James I., c. 4, sec. 2).

So deep was the chasm that separated the Catholic Palesmen from their Gaelic co-religionists, that the Deputy succeeded in getting his Bill of Attainder proposed by ex-Judge Everard, and it was forthwith unanimously carried.

Chichester's crowning glory was a congratulation from Laud, Archbishop of Canterbury, in 1614. To this he replied:

"I received letters from my good friend, Sir Richard Boyle, that your Grace . . . wished him to congratulate me, in your name, for clearing myself . . . of many foul aspersions. . . . For this acceptable news I esteem myself as bound first unto Almighty God, in Whose presence I daily stand, and do what I do" (T.C.D. MS.).

It is, perhaps, worth mention that one of the "Recusants'" grievances related to the exactions of Alderman Weston, as farmer of fines, a complaint which the Deputy eloquently refuted.

His confidential correspondent Sir Humphrey May was one of the executors to the Earl of Devonshire's will.

CHAPTER XXV.

THE DOWNFALL OF THE DEPUTY.

After the Anglo-Catholics were routed, Chichester returned to Ireland to manage the House of Lords, as the Irish Assembly had been prorogued pending the hearing of the "Recusant" remonstrance.

His triumph in packing and degrading the Parliament, and bringing about the ruin and exile of the Celtic chiefs, proved to be the end of his greatness. Before another year closed he was dismissed from his office as Deputy. The first serious official allegation against him was made by the friend who afterwards became his successor. On 3rd March, 1614-15, Sir Oliver St. John complained to the King's Secretary, Wynwood, that he was obliged to resign his post as Surveyor of the Ordnance, and assails Chichester:

"Has remained in Connaught, where he finds all things peaceable; but the quality of his employment and associates, for that which concerns the civil part, becomes almost unprofitable, by reason of the evocation of all causes out of the province to the Courts at Dublin, contrary to the rules of government heretofore practised, and by an extraordinary Commission which the Lord Deputy (beyond the example of former times) hath given to the Justices of Assizes, whereby they deal in all those causes that are assigned to the President and Council of that Province, either by their Commission or instructions, and so they are left without opinion or power to control these people. . . . Besides the cement of Popery that joins them all, they have not omitted other links of combination, that whatsoever shall fall out to concern one may pertain to all—these people being more curious of alliances than any in the world" (S.P.I., 17).

Meanwhile King James was using Chichester to wheedle money out of the Irish Parliament. The Deputy was anxious that its sittings should be continued, in the hope of securing an Act to perfect title to his estates, and the King befooled him with promises that it would not be dissolved if a subsidy was voted. Other Bills, on which the Irish Executive had set their hearts, had also been submitted to the English Privy Council, in accordance with Poynings' Act, and were to be made law. Davies and Winch went to London to explain their provisions, and brought back the " heads " approved by the King. All usurpations and infringements were thereby to be condoned ; and woeful would be the disappointment of the lawless Deputy and his advisers if Parliament should be prorogued incontinent.

For, since the Attorney-General had come to Ireland, wherever Acts of Parliament blocked his way, they were set at naught. Where English precedents were found inconvenient, they were ignored. If legal analogies supported Irish customs, they were held inapplicable. If an English statute protected an Irish estate, it was derided. To recognise or obey either Common or Statute law would have checked the sweep of confiscation and hindered rapidity of plunder.

Even the wholesome provision of the Brehon Code, which anticipated by a thousand years the Married Woman's Property Acts of the Nineteenth Century, was declared repugnant. The Brehons rendered inviolable the wife's portion of a chieftain's lands, and therefore Davies, Winch and Co. decided that the whole estate vested in her lord, and could be confiscated *en bloc* at his downfall (D.R., 138). Gavelkind, lawful in Kent and in Wales, was held in Ireland a vicious and illegal custom (D.R., 138). Attainders *post mortem* flourished, although in England an escheat, even of the goods of dead Jack Cade, was refused by the Courts.

Well, therefore, might Davies, A.G., and Winch, C.J., feel ill at ease unless such courses were legalised. Their carefully prepared Bills only awaited the sanction of a complaisant Parliament ; and Chichester languished with anxiety for an Act which would place his Patents safe from cavil.

On the 23rd February, 1611-12, Chichester wrote to Cecil that he " has sent over Sir John Davies as requested, who was bringing such further advices and heads of Acts as the Privy Council shall think fit to add to their former sent by Sir H. Winch." These included Bills :

" For the confirmation of the Letters Patent granted to the Undertakers in Ulster.

" For the utter abolishing of the Brehon Law and custom of Gavelkind used among the Irishry.

" For declaring that such as are slain or die in actual rebellion shall be adjudged persons attainted of High Treason.

" For declaring that attainders found by ' office ' shall be as effectual in law as if the records of attainder were extant " (S.P.I., 248).

These Bills were brought from London, but never became law. Though deemed essential to legalise the situation, they were not even introduced. What frustrated the hopes of Davies and the Deputy ? At first everything promised well.

On 25th March, 1615, the King wrote :

" Has changed his resolution concerning the dissolving of Parliament to next Session. It shall depend upon the good or ill success of the Bill of Subsidy now transmitted. If by his good endeavours Chichester shall procure the passing thereof, then the Parliament is to be prorogued to some day certain in the next winter quarter, between Michaelmas and Easter, as the Deputy shall appoint."

It was on the same 25th March, 1615, that James I., with his own hand, added the famous postscript concerning the Plantation, in a despatch to Chichester :

" My Lord—In this service I expect that zeal and uprightness from you, that you will spare no flesh, English or Scottish ; for no private man's worth is able to counterbalance the perpetual safety of the Kingdom, which this Plantation, being well accomplished, will procure " (M., 628).

The King was evidently getting tired of the " great Deputy," and suspected much. Vainly did the Solicitor-General (Sir R. Jacob) write to Secretary Wynwood on 20th April, 1615 :

" The Bill of Subsidy passed this day in the Lower House. The Lords are as willing as the Commons " (S.P.I., 46).

On June 12th, 1615, the King's thanks for the Subsidy are sent (S.P.I., 64), but immediately money was obtained the tone changed.

On 13th June, 1615, Sir Richard Cooke, the Irish Chancellor of the Exchequer, wrote to Wynwood openly advocating Chichester's removal:

" Observes since his last return the Exchequer is growing worse than he left it, and the Council-table nothing at all amended. Is with all his heart glad that Sir Dudley Norton's coming is resolved on. . . . Thinks this is a very fine time to give an end to this Parliament . . . and if that course be resolved upon, it is high time then to remove the Deputy.

" Things here are exceedingly out of order, and cannot in time be amended, nor hardly in the time of any Deputy, for every Deputy seeks by all means to bear up the profit and credit of the place, with very much disadvantage to the King, to prevent which the best way were to make a Justice or two [*i.e.* Lords Justices in lieu of a Deputy] in whose time things might be better settled, the awards and grants of the King's lands committed to certain Commissioners and the revenue and casualties better looked to, and not given away by concordatum, as they now are.

" If some better course be not taken, and that speedily, all things here will grow to a greater confusion than hath been seen by any man now living here. Cannot with patience think how much his Majesty is abused here, and yet it is dangerous to descend to any particular, as his nephew can explain " (S.P.I., 67).

Doubtless it had begun to be whispered that Chichester had for years embezzled the rents of the six escheated Ulster counties after the Flight of the Earls. His heir was made liable for them after his death by Charles I. (Inquisition at Cavan, 19th April, 1626, No. 4, I.I.). In 1615, in addition to his pay and fees as a Deputy, he also drew emoluments which must have startled the thrifty Sir R. Cooke. He then figured in the Army List in five paid capacities:

1st—As a General.

2nd—As Life Governor of Carrickfergus.

3rd—For an allowance of Horsemen.

4th—For an allowance of Footmen.

5th—For Warders for Greencastle, " in consideration of other things of good value which he departed withal to the Londoners, towards the Plantation at Derry and Coleraine."

His nephews also appear on the 1615 list, for pay or pension —George Trevelyan as late Constable of Dungannon, and Arthur Bassett for the town of Carrickfergus (S.P.I., 10).

Chief Justice Denham, in concert with Cooke, and on the same day, wrote to Wynwood :

" If it be his Majesty's pleasure to put an end to that great affair [the sittings of Parliament] it may prevent all occasions of disagreement which may happen through the continuance thereof."

The King, thus urged, but contrary to his promise (now that the Subsidy had been voted), wrote to Chichester, on 22nd August, 1615 :

" The long continuance of the Parliament causes interruption of the ordinary course of justice there, and, being burdensome, as well to the persons elected as to those of the meaner sort, who have been charged with great sums of money for the payment of the daily wages due to the knights and burgesses for their attendance, the King has changed his purpose of holding another Session in October next, and has resolved to dissolve the Parliament, and this Chichester is to do as soon as convenient " (S.P.I., 87). We have shown what the " great sums " for " daily wages " were, and therefore this flimsy excuse concealed the true motive for dismissing the handy legislature.

The Deputy evidently got his House of Commons to protest, but in vain. He even despatched the Speaker, Sir John Davies, to London to encounter the Royal wishes, and for this received a rebuke.

On 17th October, 1615, the King wrote :

" Has received your advertisement announcing that the Commons, by their Speaker, had besought him that the Parliament might sit for another Session, to pass certain

Bills transmitted under the Great Seal, instead of being dissolved. But the King, having viewed the Bills, does not conceive them to be such as necessarily require the continuance of Parliament " (S.P.I., 93).

On 31st October, 1615, Chichester replies to Wynwood : " Received his Majesty's Letters declaring his pleasure for dissolving the Parliament here. This has long since been done, but not without the general regret and distaste to these people " (S.P.I., 95). " Long since " was a week only. The dissolution took place on 24th October, 1615.

The step of sending Davies to Court seems to have hastened Chichester's downfall, as the report made by Sir John on his return shows how ill he was received.

On 22nd November, 1615, Davies arrived back from London (S.P.I., 108), where Sir Richard Cooke had been his active enemy (S.P.I., 46). Scarcely had he reached Dublin when a missive came (27th November, 1615), from the King, dismissing Chichester as Lord Deputy (S.P.I., 99).

Before this was received, Davies' account of the state of feeling at Court created consternation, and he evidently warned both the Deputy and his friends that their reign was coming to an end. For, on the day Davies arrived, Chichester and the Irish Privy Council despatched a strong protest to London. Its terms are not now forthcoming (S.P.I., 108), but its nature may be gathered from the reply of the English Lords of the Council in December, 1615 :

" Having imparted to his Majesty their Letters of the 22nd November, wherein they declare their grievance for the relation which Sir John Davies, his Majesty's Attorney, has made (as they write) both in private to the Lord Deputy, and in public to the body of the Council ; and that, as he pretends, from his Majesty's mouth, whereby they hold your honours and reputations grievously wounded, for those heavy imputations which are laid upon them for their misgovernment in the administration of the affairs of that Kingdom, his Majesty has commanded them to return them this answer :

" That Sir John Davies has failed, both in duty and discretion—wherefore when time shall be convenient, he is to render an account for making his report, with whom at no

time he has had any such language which might tend to the disreputation of any person of quality. Neither gave him direction to deliver any such message [to those] holding now charge in that realm, or to the disgrace of the present Government. Only in general his Majesty was pleased thus far to pen himself that, after so loving a peace, so securely established, some unnecessary expenses might seasonably be retrenched, and the revenue of the Crown be both better husbanded and more largely increased.

" Of the other parts of their letter, wherein they so highly justify the carriage and proceeding both of the martial discipline and civil policy in that Kingdom, this is all that they have for the present to say : that when his Majesty shall be pleased to take into consideration the Constitution of that State, if what they now write they shall then make good, his Majesty shall have cause to commend their painful and faithful endeavours, which they may be assured he will bountifully reward, to their honour and contentment. They cannot conceive them to be ignorant how things stand, whereof, in convenient time, they shall understand his Majesty's pleasure " (S.P.I., 107).

The actual text of the King's Letter of dismissal was flattering enough, but the Royal instructions to his immediate successors, the Lords Justices (Jones and Denham), involved a sweeping condemnation of the practices of the ex-Deputy (S.P.I., 101). Amongst them was a prohibition against grants " before an office be found, a record entered, an indifferent valuation made . . . that in the survey of escheated or concealed lands a better valuation for the King be made than heretofore hath been set down."

This was preceded by one equally significant affecting Chichester's craftsman and go-between, Sir James Hamilton. The Lords of the Council sent the following peremptory command from London, on 14th December, 1615 :

" Sir James Hamilton's presence is desired. Chichester is to forbear any further treaty with him concerning a sale to his Majesty of his customs in the North " (S.P.I., 100).

Chichester was also attacked for nepotism by the Privy Council, and this seems to have contributed to his displacement.

His brother, Sir Thomas, got 500 acres in Donegal and 1,000 acres in " Radonell," and was knighted by him in 1607 (C. MS., 238, 332, 327).

In the Wexford " settlement " he allotted his nephew, George Trevelyan, 4,000 acres ; his son-in-law, John Langhorne, 1,000 ; his parasite, Sir James Carroll, 1,000 acres. In defending himself for this after his removal, in a letter to the Privy Council, of 24th December, 1616, he acknowledges having received their " letters of restraint " on 9th December, 1615, within a fortnight of his dismissal. His nephew, George Trevelyan, had also been made Provost Marshal for Munster in 1610 like his other nephew, Bassett (S.P.I., 514).

Chichester received, on 19th December, 1615, a letter from the King, containing the following passage :

"And whereas orders, letters, and instructions, formerly sent from hence, have not been in all cases duly imparted by the Deputies to the Members of the Council, he directs that these and all other instructions, letters, or advices which they shall receive from the King or the Lords of the Council here, needful to be imparted, shall, with all diligence, be imparted unto them or some of the principal of them, and that once every quarter all letters and directions from hence . . . shall be read at the Council-table by one of the Secretaries of State " (S.P.I., 102).

Chichester received a letter in flowery terms as to his " disburthenment," but was under no delusion as to the cause, for a month later, January 12th, 1615-16 (S.P.I., 115), he writes to Lord Ellesmere expressing " regret at their Lordships' ill opinion of the Government," and sent the letter over by the faithful Attorney-General, to try to break his fall.

Nor was the mission of " my noble Attorney," as Chichester loved to style him, wholly unsuccessful.

As the upshot of Davies' second embassy to London, he was continued as Attorney-General, and Chichester was soon consoled with the post of Lord High Treasurer. The official partnership between the twain was then maintained, with the result that the chicane in connection with the fisheries was steadily pursued.

CHAPTER XXVI.

ON THE TRAIL OF CRIME.

Within three years of Chichester's downfall an attempt was made by courtiers of James 1st, jealous of the uprise of Hamilton, to ransack the origin of his acquisitions. His countryman, Sir James Balfour, was despatched by the King to Dublin with orders to Deputy St. John to investigate them secretly in the Star Chamber. Brief is the noontide of the favourite, and the pursuit of Hamilton's malpractices boded ill for Chichester.

The only clue to the process directed against him which remains, is obtained from letters preserved in disconnected private collections. Ampler details would have been welcome, but the documents of State must have been destroyed. Still, from what has come down to us, a picture of their perturbations can be limned. "The Scot" was hard pressed to disgorge, and was only saved because the grim figure of Chichester towered in the background.

The first of the documents is dated 12th October, 1618, and is in Hamilton's handwriting, "The directions of the Lord Deputy to me, Sir J. H." It states that eleven of the Patents which he got under the Wakeman-Irelande Letters were called in question by the King. St. John first summoned him to appear in the Star Chamber on the 12th October, 1618, and, deeming his answers unsatisfactory, compelled Hamilton to write down from his dictation the following command: "His Majesty's pleasure is that you, Sir James Hamilton, Knight, shall exhibit to the Lord Deputy the principal of the Letters Patent aforesaid. His Majesty's further pleasure is that you, Sir James Hamilton, shall

exhibit to the said Lord Deputy all such other writs as concern the premises " (H. MS., 29).

Hamilton then left the " Castle Chamber." Next day he sent a masterly reply, evidently framed by an abler pen than his own :

" 13th October, 1618.

" May it please your Lordship,

Being yesterday commanded by you to write verbatim what is above written, and to receive the same as a direction to myself, without your hand thereunto, and your Lordship also intimating unto me verbally the secret carriage thereof, I have entered into due consideration of the premises, and do ingenuouslie profess that I understand not the extent of the several words following, viz. :

First : ' The principal of the Letters Patent aforesaid.' Whether your Lordship mean any one principal or chief Letters Patent of all the rest, and which that is ; or whether you mean all the original Letters Patent particularly above mentioned, or what else ?

Secondly : ' All such other writts as concern the premises.' Whether your Lordship mean His Majesty's Letters or Warrants for the passing of that and principal or chief Letters Patent, or any conveyances thereout derived, or counterparts thereof, or els all my evidences whatsoever, or what els ?

Thirdly : Whether by the word ' exhibit ' your Lordship means that I should deliver unto you, the Lord Deputie, the said Letters Patent, or other my evidences, to be perused in my own presence, and so to be delivered back again to me, or what els do you mean by the word ' exhibit ? '

In these particulars I humbly crave your Lordship's explanation in writing, that I may be the better able to make your Lordship a dutiful answer, as becometh me, these being matters which do concern my estate, and I am confident it will stand with his Majesty's pleasure that I should receave plain and clear direction in that which I have commanded me in his name, which I do as much revere as any subject living can do.

" J. H."

The records veil St. John's answer—if, indeed, any was sent. So we know not whether this parry was followed by a thrust. There is, however, proof that unhappy St. John soon after shirked the task which the King imposed. He went on his knees almost, to beg that he should be spared the duty of making unpleasant enquiries. He even sent the Vice-Treasurer Blundell to Court, to back up his prayer, primed doubtless with facts that could not decently be reduced to writing. Otherwise he would have had to report that Chichester was the principal culprit in the misdeeds of which Hamilton was accused, and that if they were probed to the bottom, a State scandal must ensue. His letter of 24th November, 1618, to the Marquis of Buckingham (the favourite of James I.) reads as if it were written with Chichester at his elbow. The only copy of the document extant was discovered in the papers of Chichester's kinsman, Fortescue, and the artfulness of some of the phrases bespeaks a more practised penman than St. John. The letter ran :

" It has pleased his Majesty to employ Sir James Balfour hither for the examination of some articles exhibited unto his Majesty against Sir James Hamilton, with especial warrant by his princely letters unto me and some of the Council here, to receive such informations as his Majesty had committed to Sir James Balfour's trust, to be imparted unto us. In obedience to which, we have with all care and secrecy proceeded therein and given his Majesty a just account of what we have found wherewith I hope his Majesty hath received good satisfaction. And, albeit my duty must ever tie me to obey his Majesty's royal commandments before all other respects, yet I have suffered much in the opinion of noble and worthy personages, as well in England as here, as if I had entered into a business unfitting the place of his Majesty's Deputy, who ought tenderly to preserve his Majesty's subjects in peace and contentment, and not be an instrument of blemishing the reputations or questioning the estates and fortunes of any man. The business of Sir James Hamilton is now brought to that estate as I hope shall hear no more of it.

" Yet, lest his Majesty may, by information given unto him

in the like nature, be drawn to employ my service again, in that kind of examination concerning the lives and states of any of those who are, by his Majesty's princely favour, committed to my charge and government, I hope his Majesty will be graciously pleased to join to mine assistance his principal servants and councillors of this Kingdom, and that his warrants and commissions may be open, and the proceedings in them fair and legal.

" Otherwise if I be commanded to handle them in a private manner myself alone, or with some only, whatever misfortune shall light upon any, I shall be reputed the causer of it, and cast myself into general hatred, and be unable to do his Majesty that service in this Kingdom which he may expect from an officer employed in so weighty a charge.

" I humbly pray your lordship to hearken to Sir Francis Blundell, whom I have entreated to wait upon your lordship in this particular, and to vouchsafe unto me your honourable care for my preservation " (F.P., C.S.P., 66).

Chichester's old subordinate was evidently an accomplice. The faithful Sir John Davies was still Attorney-General, and the only upshot of the business was a consolation-grant to Sir James Balfour two years later (C.P.R., 18, James I.).

So for a time the dread spectre which haunted Hamilton and Chichester was laid.

A letter written in 1621 to Hamilton in London by his brother John, who at that time managed his Irish affairs, throws light on the Wakeman scandal and on the final intrigue, which led to the long-delayed exposure :

" Dublin, 10th May, 1621.

" I have received your letters which you sent me by Anthony, and according to your direction I came to Dublin with the best speed I could ; but as yet cannot make any agreement for St. Mary Abbey, for that no parcels of it is passed ; neither had they fully condescended what parcels to pass, by reason of some differences of the opinion of Mr. Delahyd and Mr. Recorder, and of Sir Francis Annesley [Secretary of State] and Sir James Carrolls business in other affairs, that could not attend it. Notheless they have now resolved by God's grace to pass the grant, and to dis-

pose of it before Sir Francis come for England, if they can conveniently do it, but howsoever to pass it.

"For which purpose I mind to attend here till that be effected, but since my coming we could not meet with one that would buy the whole and pass it, nor yet your half of it, but sundry would buy particular parcels when it is passed. As for Plarye [Abbey], Mr. Crow did enter his suit as you wrote, but proceeded no further, he being content himself to forbear it, and the state of that matter being made known to the Judges, and that you were absent, to whom the right did belong, who also had the writings and evidences that might clear that matter, with yourself, they thought fit that it should be deferred until your coming, which both Justice Sibthorpe and the rest of your friends have thought was the best course. . . .

"Your account that you wrote for, concerning Mr. Wakeman shall come over with Anthony, and so, also, I hope, shall the discharge that you desired from Sir Arthur Savage, who hath promised it, but will not meddle with anything concerning St. Mary Abay. I have spoken with Sir James Carroll concerning Mr. Wakeman and the money that is due to him; and he sayeth that, for his part of that money, he disbursed it at the direction of the Earl of Devonshire and of Mr. Earth and Mr. Wakeman, as may appear by their letters and other writs, which you have in your custody, by which you might cause them to allow it, if you would; for if he were there with these writs, he might do it.

"And he doth also allege that, at the purchase of that grant, he did disburse the money in great, and did receive it again in such small parcels as it never came together to a sum to do him good, and withal that you kept for your own use the chief and principal parcels, wherein was most benefit, and that he got those that were meanest, or at least rate to be had for; and that therefore you should regard him; so that, howsoever it be, we cannot get him to send over any money, or to relieve you of that debt; but you must take the best course that you can there for it, and we shall do what we may here, and advertise you more fully by the next" (H. MS., 44).

Sir Arthur Savage's refusal to "meddle with anything con-

cerning St. Mary Abay " showed him a man of penetration. He was Sub-Treasurer of War and General Receiver in Ireland, appointed on the 16th July, 1616 (S.P.I., 129), and took grants in Kerry and elsewhere. Of him, on 16th May, 1611, King James wrote to Chichester :

" At your Lordship's request, though such applications of yours have been somewhat frequent and more than he could have wished, his Majesty gives you authority to swear Sir Arthur Savage of the Council, in consideration of his sufficiency and ancient service " (S.P.I., 58).

The Mr. Crow referred to had possessed himself of the Monastery of St. Augustine, and " Crow Street," Dublin, near where it stood, perpetuates the memory of his grant (L.M., pt. 5, p. 246). As has already been stated, " Mr. Earth " was, in 1605, the Steward at Wanstead Manor to the Earl of Devonshire, and became in 1606 his executor.

The Wakeman scandal was now on the verge of exposure, but before it was finally exploded another Patent was secured.

It is this which forms the subject of the letter just quoted. What happened ? First a King's Letter of 18th May, 1620, was got, directing a " confirmatory grant " to James Hamilton of the eternal £100 out of St. Mary's Abbey " which he had acquired from John Wakeman " (C.P.R., James I., 509). Then on the 5th September, 1621, a King's Letter arrived for a grant to Sir James Hamilton, as assignee of John Wakeman, and to Sir James Carroll, of " so much of the lands and possessions of Saint Mary's Abbey as shall amount to £100 Irish " (C.P.R., James I., p. 512).

Finally, with St. John's connivance, on the 7th May, 1622, a crown was placed on the edifice of fraud by making Hamilton Viscount Claneboy. Soon afterwards the storm broke, and facts were established by the decision of legal tribunals, which put beyond yea or nay the magnitude of the scandal —even though it was only partially analysed in the Courts.

The attack began with the recall of St. John as Deputy. Lord Falkland was appointed, 18th April, 1622, in the room of Chichester's old comrade, but before he reached Ireland, Hamilton had become a full-blown peer. The application

for the King's Letter of 1621 explains the outbreak of suspicion in London after St. John had been got rid of. The Privy Council there set renewed enquiry on foot, and in February, 1622-3, Lord Falkland thus addressed them :

" I find no such letter from his Majesty, as your lordships mention of the 8th of September in the 19th year of his reign, concerning St. Mary Abbey, but I believe the date is mistaken, for I have one of the 5th of the same month and year, wherein the Lord Deputy for the time being, is required to accept of a surrender of a former grant, made unto the Lord Claneboy [Hamilton] and Sir James Carroll, of St. Mary Abbey, and to pass a new grant in fee farm in lieu thereof. By virtue of which letters I have taken the Surrender, and signed a *fiant* for the fee farm, which I have given order shall be no further proceeded in (according to your lordships' directions) until I be warranted thereunto by his Majesty or your lordships, and have sent unto the Auditor and Surveyor for a particular of such parcels as have passed upon the former grant, which will be ready within these two or three days, and then by my next despatch I will present it unto your lordships " (S.P.I., James I., vol. 237, no. 987).

Soon afterwards, the structure of deception was challenged before the Court of Exchequer, and perished like a house of cards. The Wakeman grants were impeached, and, in spite of every influence, were pronounced a nullity.

The fact of this decision is preserved in a manuscript in T.C.D. Library (F.I., 18, Irish Historical Pieces). This contains the copy of a submission by an English lawyer, for the opinion of learned counsel in London, on the validity of the Patents. The counsel, in advising, states that he was one of the Judges of the Exchequer in Ireland who condemned them in the reign of James I. His name is not given ; and the " opinion," dated 26th April, 1630, was possibly obtained by the Crown at the instance of Trinity College itself.

The College was largely interested in the grants made during the Ulster confiscations. Thus James I. wrote to Chichester on 15th March, 1611 : " Trinity College having been disappointed of a good quantity of escheated lands in Ulster which his Majesty had appointed to pass thereto . . .

by impeachment of ill-affected persons " (S.P.I., 19). The fortunate preservation in its Library of the copy of the " case," and the " opinion," enables us to conclude that the exposure took place between 1623 and 1624, while Chichester was abroad as Ambassador.

It seems probable that the ex-Judge whose opinion reveals what had taken place was Sir Robert Oglethorpe, of Gray's Inn. This view is based on the fact that Oglethorpe was appointed second Baron of the Exchequer in Ireland on 23rd May, 1605, and resigned 17th May, 1624, while all his colleagues of that period either died in office or had been promoted to other posts, which they held in 1630, when this opinion was delivered (L.M., v. 2, p. 51).

Oglethorpe's " opinion " is now published for the first time, but Sir John Gilbert prints the three first paragraphs of the " case " in his learned " Chartularies of St. Mary's Abbey " (v. 2, lxxii). They serve as the official epitaph on the two most famous Viceroys of Irish History. Yet they disclose but a glimpse of the rapine of the reign they served in. Better, even, the acreless exile of O'Donnell and O'Neill and their descendants than the triumphs which survive in such a monument.

CHAPTER XXVII.

A JUDICIAL EXPOSURE.

THE instructions from the legal advisers of the Crown in 1630 to ex-Judge Oglethorpe took the following shape :

" The case of St. Mary Abbay and divers other lands in Ireland granted by the late King to John Wakeman.

" St. Mary Abbay and the lands thereunto appertaining.

" 1. King James, by his Letters under his Signet, dated 8th November, 1603, authorised the Earl of Devonshire, Lord Lieutenant General of Ireland, to grant unto John Wakeman, in fee simple, without rent, by Letters Patents, so much of his lands and hereditaments in Ireland as should amount to the clear yearly value of £100 English per annum, to be held of the Castle of Dublin in free soccage. By colour of which Letters, the dissolved Monastery called St. Mary Abbey, nigh Dublin, in Ireland, with divers lands thereunto belonging, worth nigh £1000 per annum, were passed in fee simple without rent to John Wakeman, by Letters Patent dated 28th February, 1603-4, at the survey of £42 12s. per annum. Yet was the survey thereof (then upon record) £179 10s. 3d. per annum. And withal, the premises (joined with divers other lands of more value) were then in lease from the Crown with Thomas late Earl of Ormonde, at the entire rent of £200 per annum, but there was inserted in this lease, after the *habendum* and *reddendum* of the rent of £200, an explanation how the said rent was to be divided and answered, out of each several parcel, thus, viz. :

' For the said Abbey and lands, £42 12s.

' For the Rectory of D., £4 per annum.'

" And so for the rest.

" 2. The said Wakeman, by virtue of a second Letter under the Signet, dated 29th September 1610, passed not only the premises, but also all other the lands and hereditaments belonging to the said Abbey, within the Realm of Ireland, by Letters Patent, in fee simple, without rent, upon the old consideration of the first Letter, to be holden in free soccage of the Castle of Dublin, the same amounting to double as much in yearly value as that he formerly passed upon the first Letter.

" 3. In this last Patent were excepted all the lands passed for a term of years by Queen Elizabeth to the said Earl of Ormonde, before the 28th August, 1575, and in truth there was no lands parcel of the premises passed for years to the Earl *before* the said 28th August, 1575, but there was several parcels granted to him by the said Queen, for years, which was part of the said Abbey land, *upon* the said 28th August, 1575.

" And thereupon the Judges in Ireland conceived that this last Patent was procured by Wakeman upon false suggestions ; and, for that reason, the Barons of the Exchequer there have, ever since, denied to give way to the allowance thereof, or to the taking of the rents and profits by Wakeman or his assigns of any part of the premises by colour of the said last Patent, in regard of the misinformation, and that there appeared there was not valuable consideration given for so large a grant, being of more value than £2,000 per annum.

" The residue of the lands passed upon Wakeman's first letter of 1st James :

" After the said Patent of £42 12s. of the lands of St. Mary Abbey, passed by Wakeman *ultimo Februarii anno* 1st James (28th Feb., 1603-4) there were past upon the same Letter the five ensuing Patents of several lands in fee simple, without rent, to be holden in free and common soccage of the Castle of Dublin, viz. :

" 1. A patent dated 5th March, *anno* 1st James (1603-4) of the manor of Donamore, in the County of Dublin, at the survey of £16 10s. per annum. The manor of Ratothe, in the County of Meath, being one of the ancientist manors of

the Crown land of that Realm, at £13 5s. 4d. The Rectory, Killaughie, in the County of Kilkenny, at forty shillings per annum, and the village of Ballingrange, in the County of Westmeath, at the survey of £3 6s. 6d. per annum, the said village being in lease formerly at £3 8s. 6d. per annum, from the Crown, and the said Rectory and it, being then in lease with the Abbey of Kells, in the County of Meath, called the Abbey of St. John's, at the entire rent of £17 18s. 6d. per annum.

" All the premises were past at the survey of £35 1s. 10d. per annum, in one only Patent, dated 5th March, *anno* 1st James (1603-4).

" 2. The salmon fishing of the River of the Bann, in the Province of Ulster, worth above £1,000 per annum, was past in like manner upon the same Letter at £10 per annum, by another Patent, dated 2nd March, 3rd James (1605-6).

" 3. The fair and market of Carrickfergus was past upon the same Letter at 6s. 8d. per annum, by another Patent dated 11th April, *anno* 4th James (1606).

" 4. The manor of Ballymore Loughshedie, in the County of Westmeath, with divers other lands thereunto belonging or therewith then demised from the Crown for years, in one entire lease, was past likewise upon the same Letter, at £17 16s. 8d. per annum, by a subsequent Patent, dated 18th May, 4th James (1606).

" 5. And in like manner were past upon the same Letter, by a fifth Patent, dated 23rd February, *anno* 6th James (1608-9) several parcels of land, to the value of more than £2,000 per annum, at the bare survey of £27 9s. 6d. per annum, part whereof was then the actual demesne and possession of the Crown, and demised only for term of years, and the other part past away in fee farm formerly for small or no consideration, upon apparent defective grants grounded on false suggestions, as, namely, the manor of Castle Mac-Aulie in the County of Cork, passed by Sir Thomas Roper, now Lord Viscount of Baltinglass, upon a former general Letter, which did not warrant the passing thereof, at the survey of £8 2s. per annum in fee farm ; the territory of Ferterie [Vartry] in the County of Wicklow, viz., Castle-

kevin, Tomer land, and other lands, were past in fee farm upon a former defective grant to Luke Toole's ancestor, attainted of treason after, at £4 per annum, and so divers others of the premises.

"The two fee farms last specified, both which are past but at £12 2s. per annum, in survey, are worth above £1,500 per annum.

"The rest of the premises, which were past upon the said last fifth Patent of Wakeman, as also all the other parcels which were past upon the other four precedent Patents, were at the time of the passing thereof, of the King's ancient demesne, and in the actual possession of the Crown, and let forth only then for term of years.

"Most of all the lands before specified were past after upon the Commission of Defective Titles, dated 2nd March, *anno* 4th James (1606-7), save only the salmon fishing of the River of the Bann, which was past without valuable consideration, in fee farm, *anno* 8th James, to the City of London, by a special Patent, the which Patent now is in question before his Majesty.

"There be some parcels yet of the premises, which were past upon Wakeman's first letter, to the value of £400 per annum, besides the Territory of Ferterie [Vartry] aforesaid, worth above £500 per annum more, that are not yet past upon any new Patents, the particulars shall be delivered upon occasion. The yearly value of all the premises surmounts £4,000 per annum."

This was a startling "case," but the lawyer who prepared it, did not even know the full facts.

Now for the "opinion" of the ex-Judge who was consulted by the Crown:

"April 26th, 1630.

"Upon this case being referred to me, I am of opinion that the passing of the lands at an under-value, viz., at £42 12s., whereas by ancient survey and record the same was formerly rated at £179 10s. 11d., will not make the Patent void in law, but (as thus advised) I think his Majesty may be relieved in equity for the surplusage above £100.

"But in respect that this is a great and general case, and

will extend to many Letters Patents in Ireland, I wish that further advice be taken therein.

"I am also of opinion that the lands and tenements, demised by Queen Elizabeth by Letters Patents, dated 28th August, in the 17th year of her reign, to the Earl of Ormonde for years, are sufficiently in law conveyed by the Letters Patents, dated 29th September, in the 8th year of James; but that his Majesty hath good cause to be relieved in equity for the same; and this point was so resolved in Ireland by the Judges there, whereof I was one, and so was certified to the Lord Deputy, upon referment from his late Majesty.

"And, thirdly, it seemeth to me reasonable that the King be also relieved in equity, for the surplusage of the lands that were past, as well in the last Patent of 29th September in the 8th year of James, above the value contained in the first Letter made to Wakeman, as also in the other five Patents, seeing the first ground was, the said first Letter was for £100 only and was satisfied in true meaning, by the lands of St. Mary Abbey, past at the value of £42 12s., being upon record of the value of £179 10s. 11d. per annum.

"And the Commission of Defective Titles cannot bar the King for his interest in equity for this *fraud and deceit*, for that the true intention and scope of the said Commission was only to confirm estates that were defective in law, and not estates *fraudulently* obtained.

"But this point being a general case for much lands in the realm of Ireland, and may concern the profit of his Majesty very much, I do wish that further and better advice be taken therein; but for my own part, when I was in Ireland, I was and now am of opinion as aforesaid."

Terrible as this exposure appears, it was not by any means complete. There were many intervening grants between 1603 and 1614, pretenced to be in satisfaction of Wakeman's claim of £100 a year—met though it had been several times since the making of the original Patent. As the issue of the 1610 grant "upon the consideration of the first Letter" was declared illegal as being excessive, what is to be thought of the Patent for the entire Bann, which was over and above the excess?

Although the Exchequer Judges confined themselves to condemning the single grant then before them, their ruling amounts to a judicial pronouncement that all the intervening Wakeman Patents were fraudulent and void.

Six years after Oglethorpe's opinion was given, the question of the validity of the Patents was again raised at Wicklow on a Commission granted by Charles I. An inquisition was taken on the 21st April, 1636, for the King, of the territories of Fartree [Vartry]. This recites that :

" Henry VIII., by Letters Patent, upon the petition of Turlough O'Toole and Art O'Toole, granted to Turlough the Castle and Manor of Powerscourt, and to Art the Manor of Castle Kevin and the lands of Fartree, with conditions to use the English habits, etc. That Art's son, Barnaby, on the 17th January, 1596, entered into rebellion against Queen Elizabeth and died ; that Luke Al Feegh O'Toole was the son and heir of Barnaby ; and that Castle Kevin is and hath been uncovered for thirty years last past.

" Further, that the late King James, by Letters dated at Wilton, the 18th November, 1603, directed the late Earl of Devonshire, then Lord Lieutenant, to grant one or more Letters to John Wakeman of so many lands, etc., as should amount to the yearly value of £100.

" That, by pretence of the same, Letters Patent were granted to Wakeman, bearing date the 28th February, 1603-4, of the site, circuit, and precinct of the late dissolved Abbey of St. Mary by Dublin, and other lands—viz., Clondalkin, Dalkey, Howth, Clonsilla, Dunboyne, Gibstown, etc. . . .

" That like Letters Patent were granted to John Wakeman, bearing date the 5th March, 1603-4, of the Manor of Dunnamore, etc., of the yearly value of £35 1s. 10d.

" That like Letters Patent were granted to the said John Wakeman on the 2nd March, 1605-6, of the river and fishings of the Bann, with the Salmon Leap and fishings thereof, of the yearly value of £10.

" That like Letters Patent were granted to the said John Wakeman on the 8th May, 1606, of the town and lands of

Ballymore Loughsewdie, etc., of the yearly value of £17 16s. 8d.

" That like Letters Patent were granted to the said John Wakeman on the 26th February, 1610-11, of the town and lands of Castle Kevin, etc., of the yearly value of £27 9s. 5d., all in free and common soccage.

" That the parcels of St. Mary's Abbey were, before the issue of Wakeman's Letters Patent, already granted to others, as appears by records in the Office of the Surveyor-General.

" That the said John Wakeman, Sir James Carroll, and the Lord Clandeboy (Hamilton) did, by their deed of feoffment dated the 5th December, 1609, sell and make over unto Luke Al Feegh O'Toole the lands and territories of the Fartree, and that the said Luke hath enjoyed the said lands for eleven years past " (I.I.).

This Inquisition was preserved amongst the manuscripts of Sir John Coke, Secretary of State, 1625-1639, to Charles I., who died in 1644.

Appended to it were the following notes, being evidently a legal opinion obtained for the Crown during Strafford's Vice-royalty.

" (1.) That, though the inquisition was taken after the decease of Barnaby O'Toole, yet stands he attainted thereby, for so *per legem terrae* they attaint traitors after death in Ireland.

" (2.) The ruin of Castle Kevin, here found in the inquisition, is an absolute forfeiture by the Common Law of the land, being granted upon those conditions to keep it in repair.

" (3). That the Letters Patent granted of those lands by King James to John Wakeman are clearly void for that there was never any inquisition taken upon them, whereby it could legally appear the King had title to those lands, and the King could not grant that which he had not " (1888, H. MS. C., 114).

On the 7th March, 1637, the whole territory of Fartry, with the castle of Castle Kevin, was granted to Sir John Coke notwithstanding Wakeman's Patent (S.P.I., 127-153).

Thus on two occasions, official condemnations were pro-

nounced against the validity of the Patents obtained in Wakeman's name. That a similar fate, at the hands of the law, would then have befallen the Thomas Irelande grants no one can doubt, but to prevent their being ransacked they were screened from observation. Had they been impeached in that epoch, they would not have deceived a Court tipstaff.

It was reserved for the twentieth century to accord them pride of place, as genuine instruments of title, in the highest tribunal of the Realm.

In forming a judgment on these transactions, the position of Sir Michael Hicks of Ruckholt, an old servant and trusted friend of Cecil's, should not escape mention. He was Keeper of the King's Manors in Essex and a Receiver of Crown rents. The Editor of the Lansdowne MSS. cites " many instances of venality corruption " by Hicks in connection with posts of profit in Cecil's gift. Joseph Earth was a frequent correspondent of Hicks, both before and after the death of the Earl of Devonshire. His brother served in Ireland with the Deputy. It is to be inferred that it was Hicks who procured the £200 for John Manwood which was due to Hugh O'Neill. From the nature of the letters addressed to Hicks, the suspicion arises that he took part in many Irish " arrangements." The only letter of Earth's introducing Wakeman's name is dated the 27th June, 1605. It acknowledges one from Hicks concerning " some particular business," and adds :

" I have acquainted my Lord of Devonshire with your letter, who holds this kindness of yours an argument of your special love to His Lordship, for which he returneth you many thanks. Your assurance (if you so like of it) shall be my Lord, Mr. Wakeman, and myself " (L. MS., 173-8, 180-1).

In 1611, the Irish Solicitor-General Jacobs solicits Hicks' interest to procure him a fee farm in Ireland worth £100 a year (exactly the amount that proved so elastic in the cases of Wakeman and Irelande). Others ask his interest with Lord Carew " promising to secure him a fine Irish harp." Sir John Denham, Master of the Rolls, sends him " the present of an Irish harp, hoping it will prove acceptable " (1611-2). Money bribes were also openly tendered to Hicks for his interest.

CHAPTER XXVIII.

THE CARRICKFERGUS TREACHERY.

MANY of the events just narrated took place subsequent in point of date, to those next to be unfolded. They will, however, enable the final proceedings of Chichester to be more clearly understood. We have to go back only a few years. Chichester was appointed Lord High Treasurer on the day Sir Oliver St. John was sworn in to replace him as Deputy (2nd July, 1616), and he remained in that office until his death in 1624 (S.P.I., 1615-25, p. 28). St. John had been his subordinate during the whole of his previous tenure of office. Neither of them had any love for the Ulster Plantation ; and the campaign to defraud the City of London went on unscrupulously. After the collapse of the attack on Hamilton's patents, false entries made their appearance in the Crown Ledger to prepare the way for a new manœuvre to recapture the fisheries for Chichester.

Although he had, in 1611, surrendered the Bann to the Crown, and the King had conveyed the river to the Londoners in 1613, an entry covering the year 1618-19 asserts that Chichester was still Crown-tenant both of the Bann and Lough Neagh. This does not aver that rent was paid. It purports to trace the title of the Crown-tenant and does so with a suspicious precision. The entry is in Latin, and the translation of that for 1619 runs :

"ANTRYM, 1619.

" Rent for one year to March 16th.

" The said Arthur Lord Chichester, assignee of James Hamilton Knight, holds the entire fishery in

the lake of Logheagh, alias Sidney and the River of Banne.

Per annum - - - - - -	12s. 6d.
Easter - - -	6s. 3d.
Michaelmas - - -	6s. 3d."

(O'N. *v.* J., 29, App. 5.)

Such an entry, so far as the Bann is concerned, was an official fabrication. In 1611, by Deed executed before Archbishop Jones, Chichester surrendered both Foyle and Bann. Since 1613, the London Corporation were Patentees of each of these fisheries (except pools reserved to the Bishop of Derry), and had paid dearly to perfect the title.

Nor was Hamilton's assignment, as the entry very cunningly asserts, the root of Chichester's pretensions. Bassett's Patent and assignment had been substituted for it, and it was from Bassett, and not from Hamilton, he immediately derived.

The change in this entry as to rent from 13s. 4d., as it was in Bassett's Patent, to 12s. 6d. is also remarkable. In the Deed of 1611 it was averred that what Chichester surrendered bore the rent of 12s. 6d. How then could he be liable for 12s. 6d. in 1618-19 ? The Crown Rental was an annual compilation, in which the rents due to the King were entered separately year after year. Hence the importance attributable to it, and the significance of the Deed of 1611. Chichester could not have been liable for any rent to the Crown for any part of the Bann after that surrender. Yet he onerates himself with liability for rent as the true owner. This affords evidence that he retained control of certain Crown Records as Lord High Treasurer.

Doubtless he would have had no difficulty in getting a scribe to insert any statement in a Crown Rental which acknowledged liability for rent to the King and seemed to harm no one.

No Crown official would refuse to record an obligation admitted by a subject ; but Chichester had a deep purpose in view. The gamut of official procedure was familiar to him, and he was on the eve of another experiment to

recapture the waters he had surrendered in 1611. In 1619 he made an application for a fresh Patent to James I. and a King's Letter in his favour issued on the 8th August, 1620. Its terms prove the deception practised to obtain it, and the still grosser abuse founded on it. Two Patents issued on the King's Letter—one in terms much wider than it authorised. The Letter sanctions :

"A confirmation to Sir Arthur Chichester, Baron of Belfast, of all his former grants, by a re-grant of all the territories, etc., called Moylynny, Ballylinny, Magheramorne, and Clandermot, the Abbey of Kells, the Rectory of Moylisk, etc.

"And the fishings in the loughs, waters and rivers of Lough Neagh.

" Commission to issue to find the limits of Clandermot, and to inquire and ascertain the other persons in possession of parts of the territory, and to establish their rights " (C.P.R.I., 18, James I., 483).

A " confirmation," by way of re-grant, of something already possessed by the Patentee, sanctioned no addition to what had been originally granted. King James had licensed Chichester, in 1603, to fish in Lough Neagh, and his Letter of 1620 naturally recognised that privilege. A Patent of 29th November, 1603, had appointed him for life " Admiral of Lough Neagh . . . and for the disposing of all the shipping, boats and vessels thereon, with the fishings of the Lagan." This did not refer to the Bann, and Chichester then was not Deputy, but Governor of Carrickfergus. The Letter of 1620 was drafted by Chichester's lawyers, for transmission to James I., in terms as wide as words dare make it. The entry in the Crown Rental of 1619 alleged that Chichester owed the King 12s. 6d. a year, for " the entire fishery of Lough Neagh and the River of Bann," and were it a faithful record, the absence of Royal recognition of such ownership in the King's Letter would be unaccountable and impossible.

Patents embracing the whole of Chichester's possessions were to be issued, and therefore accuracy was vital to the Patentee. King James, and everyone else in 1620, knew that the Bann had been granted to the citizens of London ten years before. If a title adverse to theirs had been deliber-

ately set up, it would have been scouted by the King and attacked by the Corporation. A confirmation of a mere licence to fish in Lough Neagh, importing no additional concession, was a very different matter. This confirmation, and no other, is all that the King's Letter implies. Nowhere does it even mention the Bann.

In the Crown view, he held the " Admiralty " of the Lough, but the Irelande-Hamilton-Bassett-Chichester Patents and Conveyances had been concealed from the London Government. The English advisers of the Crown were, therefore, not alive to the astuteness of the draftsman of the new King's Letter. Vague words only were used. " Fishings in the loughs, water and river of Lough Neagh," suggest nothing like a grant of whole fisheries, much less of the bed and soil. Above all, they do not hint at a grant of the Bann. A score of rivers pour into Lough Neagh. Of these the Bann was the only one granted to the City of London. Who then could suspect that, of all the rivers connected with Lough Neagh, the stream which the King had already so granted was that which Chichester aimed to secure by a new Patent ?

The words " loughs of Lough Neagh " could be construed as including Lough Beg—a minor pool in the Bann, close to the great Lough. Their insertion in the King's Letter displayed topographical acuteness exercised to effect a new encroachment on the demesne of the Crown and the Charter of the City of London. On the 14th February, 1621, Deputy St. John (now Lord Grandison of Limerick) issued a Commission, on which Inquisitions were held in the counties of Antrim, Tyrone, Derry and Donegal, and the cities of Derry and Carrickfergus, to ascertain Chichester's lands. Fifteen Commissioners were named—mostly old confederates, such as Caulfield, Annesley, Parsons, Vaughan, Hibbots, Phillips, Kingsmett, Allen, Carie, and Meek. The ex-Deputy was skilled in the holding of Commissions and manufacturing " title."

The Commissioners were (amongst other duties) : To ascertain the extent and limits of the property which Chichester held on 8th August, 1620, " by virtue or pretence of any Letters Patent, or otherwise howsoever." Other words

of the Commission suggest that its framer was anxious to prevent wrong-doing (for Davies had now retired), and it broadly authorized enquiries to protect the interests of the Crown. The Commissioners were to return into Chancery their " offices " by the 14th October, 1621, and make proclamation in the nearest market towns of the holding of the Inquisitions (Ch. James I., No. 7).

Meanwhile Chichester was not allowed to have it all his own way. The Barons of the Exchequer charged with the care of the Crown revenues seemed watchful lest the King's interests should be affected. As a countermove, they ordered an Inquisition to be held into the existence, extent, and value of the Royal fisheries in Ulster. This inquiry, which extended to the Bann, should have embraced Lough Neagh if the Lough had escheated to the Crown, and were genuinely " in charge " in the Exchequer as a rent-producing entity. The Exchequer Commissioners, whether by accident or collusion, were, however, also creatures of Chichester. Two of them, Sir John Phillips and Stephen Allen, were then actually nominated on the Commission concerning his estates. Probably every official in Ulster at the time was under his influence. Allen had been appointed by him in 1606 " Deputy Escheator for Ulster " ; Phillips was his sworn ally. The third Commissioner was John Baker, of whom nothing is certain. Allen and Phillips knew that Chichester's object in applying for a new Patent was to secure that it should embrace the Bann and Lough Neagh, and shaped their course accordingly.

The trio sat at Derry as Exchequer Commissioners on Saturday, 26th March, 1621, and empanelled a jury, to investigate the general question of the Ulster Fisheries which by forfeiture had accrued to the Crown.

Phillips' antipathy to the Londoners was notorious (C.V., 51), and reflected the mind of his smoother-spoken patron. Nevertheless, the existence of the City Charter could not be blinked, nor the Londoners' possession of the Bann and Lough Foyle ignored. So, in spite of the design of Chichester to defraud them, the Derry jurors were permitted to find that both fisheries were the property of the Corpora-

tion of London. In framing the verdict, Allen and his co-adjutors craftily left unstated the Londoners' title thereto. The object of this can better be appreciated in the light of the events which followed within a fortnight. The Derry jurors found :

" That there was a Royal salmon fishing within the River of the Bann called ' the net fishing ' in the pool under Mount Sandal, near the Leap there, distant from the main sea 4 miles or thereabouts, and that the same is in the possession of the Governors and Assistants of the new Plantation of London, and that they have taken the profits of the fishing for the space of ten years past and that it is worth £100 a year.

" That the Bishop of Derry has the Tithe fishing one day yearly in the said ' net fishing ' on the Monday after 24th June, and the moiety of the tithes of all Salmon and other fish in the River, and that there is a Royal fishing at Ballynasse, where the sea doth ebb and flow, in the possession of the said Bishop worth £10 a year.

" That there is a Royal Salmon fishing in the said River called by the name of the Loope . . . in the possession of the said Governors and Assistants of the new Plantation of London worth £10 a year.

" That there is a Royal fishing at Portnaw . . . upon which stand certain eel weirs in the possession of the said Governors, etc., for the last 10 years, the Salmon worth £10 and the Eel, £2 10s.

" And that there is a Royal fishing from Portnaw unto Castle Toome up to Lough Neagh, at a place called Lough Beg . . . from the main sea 30 miles or thereabouts, the fishing whereof is in the possession of the said Governors and Assistants, etc., for the space of 10 years past, or thereabouts, worth £10 a year."

The Jury also found " a Royal Salmon fishing " in Lough Foyle, at Culmore, in the possession of the said Governors, etc., worth £30 a year, and declared the Crown title to several other Ulster waters (Exchequer 19, James I., No. 5). The facts were too plain to allow of the Londoners' possession of the Bann and Lough Foyle being gainsaid in Derry before a

jury of settlers. Yet, with the ink scarcely dry on the parchment that recorded this verdict (which affords internal proof that the Londoners held the Bann from the sea to Lough Neagh), Stephen Allen hied off to Carrickfergus, and there eleven days later, framed a wholly repugnant finding, declaring the Bann to be Chichester's.

As to Lough Neagh, the trio held no Inquisition, thereby disobeying the order in pursuance of which they sat, if Lough Neagh yielded a Crown rent. Such an Inquisition, of course, would have been against the ex-Deputy's interest, as the Lough was to be otherwise handled. Worse still, for nine years they failed to return the Derry verdict into the Exchequer, so that Chichester might get the benefit of the finding which it was being plotted should be made in his favour at Carrickfergus. As to this delay, Allen's guilt is settled by an endorsement on the back of the Derry Inquisition, signed by the Registrar of the Exchequer, who certifies (in Latin) that the return was only made to him on the 2nd June, 1630, and that the belated parchment was then delivered up " by the hand of Stephen Allen."

The manner in which Allen took steps to upset the verdict as to the Bann which he had just taken, was brazenly impudent.

To bring this about, the aid of " Theophilus, Lord Bishop of Dromore," and others was invoked to give his procedure a veneer of grace. Phillips cunningly kept out of it. The Commissioners, to enable the ex-Deputy to secure a finding which would be to his liking, empanelled a jury in " the county of the town of Carrickfergus." This town lies upon the Irish Channel, 14 miles distant from Lough Neagh and the Bann. It was within no legal venue giving jurisdiction in such a case, as Carrickfergus then was judicially separate from Co. Antrim. No " office " in Carrickfergus could have dealt with these waters.

The jurisdiction of Jurors and Commissioners for the taking of " office " was confined, by statute, to the county in which they sat. Lough Neagh lies in five counties (Antrim, Derry, Down, Tyrone, and Armagh), and the Bann in two. No " office " in Carrickfergus could give Chichester a title to property so situated.

It should have been investigated in each county separately. That for the Bann could only have been tried in Antrim and Derry. To empanel a jury in Carrickfergus to inquire into rights to Lough Neagh and the River Bann was grotesque. Besides, they met in Chichester's town, and it was, therefore, not only an illegal venue, but a partisan one. The statesman who packed a Parliament in 1611 by the creation of thirty-nine boroughs naturally had small scruple about packing a jury for himself. His procedure otherwise showed an intimate acquaintance with true requirements of the law. Separate "offices" were taken, on the same day, for property inside and outside the town of Carrickfergus, with separate juries in each case. Residents in Carrickfergus formed the jury who found his possessions in the town; while those empanelled to deal with property outside it were drawn from the County Antrim. This nicety demonstrates knowledge that "office" should be confined to the bailiwick in which the subject-matter of the inquiry is situated.

They afterwards held Inquisitions in Derry and Tyrone, as to Chichester's lands there, but no inquiry as to the title of the Bann or Lough Neagh was pursued in these counties. So that with sheriffs subservient, and the country prostrate, "office" was attempted only in Carrickfergus as to the coveted waters.

On the 6th April, 1621, a number of Antrim Jurors assembled there, in the Sessions-house, but the facts were too glaring for even such a tribunal. They dared not find that their patron was in possession of or had ever possessed the fisheries, or that he received rent therefor, or paid the Crown rent. Stephen Allen therefore framed their verdict cautiously. The title he constructed was a mere paper business, and avers that the King by Letters Patent of 14th February, 1605, granted to James Hamilton various lands, including Lough Neagh and the Bann; that Hamilton by Deed of 10th April, 1607, conveyed same to Chichester; that the King by Letters Patent of 1st July, 1608, granted these and other property (originally Patented to Hamilton) to Arthur Bassett, in trust and confidence to the use of Chichester; that Bassett, having secured a fresh Patent in his

own name, by Deed of 23rd January, 1609, re-conveyed everything to Chichester ; that on 10th June 1606, Chichester assigned certain lands to Hugh Clotworthy, and that on 13th May, 1611, he enfeoffed Sir Wm. Usher and Sir George Sexton to hold the remainder of the estate to Chichester's use or to such use as he by writing should declare (I.I., No. 7).

It seems beyond belief that the Surrender of 1611 or the Derry verdict eleven days before could have been withheld from the jury, or that the Commissioners, including a Protestant Bishop, to whom the fact of the Londoners' Charter was notorious, would make themselves parties to so iniquitous a finding in relation to the Bann.

Chichester, however, had thought out his plans, and the Jurors were as carefully chosen as the Commissioners. His henchmen, amongst them included men like Cahal O'Hara of Crebilly, whom he had so grossly favoured against Sir Randal MacDonnell that a Warrant was issued by Charles I. to reverse his misdeeds. A second Juror was Hercules Langford, son of his gate porter (E., 129). Another was the notorious Captain Ellis, late of Donegal (H.C., 478), of whom the dreadful story is told in the 38th Article of the Earl of Tryconnell's Petition to James I. in 1607. As this affords a picture of the class relied on by Chichester to rob the Londoners and the Crown, the reader's pardon is sought for referring him for the complete quotation to the work of Father Meehan :

" One Captain Ellis ravished a young maiden of the age of eleven years, in the Earl's country, and caused two soldiers to

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the which matter was, by a jury, presented to the Sheriff, in his Term Court : whereof the Earl understanding, informed the Lord Deputy [Chichester] and withal prayed his lordship to proceed against the said Ellis according to his delicts : but he refused to do it, and only wished the Earl to demand for the verdict of the said Jury, at the next Sessions to be holden within the country, and promised withal never to grant a pardon to the said Ellis, in the presence of many nobles and gentlemen.

" But the matter being moved at the next Sessions, and

after referred again to the jury, they presented the said Ellis guilty ; whereupon, he being absent, a writ of outlawry was directed, the which the Earl hath to show, under the clerk of the Crown's hand : and yet the Lord Deputy [Chichester], notwithstanding his former promise, granted to the said Ellis his pardon " (Mn., 137).

Such were the Jurors of Carrickfergus ! As for the Commissioners, it is noteworthy that one of them, who endorsed his name to the " Return " of the Inquisition for the town, failed to sign the " Return " for the county. This was Sir Thomas Hibbotts. All the other Commissioners, including the Bishop, signed the Returns for both town and county. Hibbotts was a close friend of Chichester's, and was appointed executor to his will. Therein he is described as a particularly honest man. Yet, like Sir Thomas Phillips, he " shied " at having anything to do with the finding as to the Bann and Lough Neagh. That Hibbotts was present in Carrickfergus, on the day of the verdict, is proved by his signature to the town " Return " ; but, just as Phillips avoided taking any part whatever under the Commission so Hibbotts did not sign the Return affecting the fisheries. He was Chancellor of the Exchequer and perhaps wanted to make it appear an impartial proceeding.

Another curious feature of the Commission is that it was never attended by Sir William Parsons, the " Surveyor General of all our lands, tenements and hereditaments in our said Kingdom." He was prudently represented at Carrickfergus by a " deputy " only. Parsons was one of the most unscrupulous plunderers of the time, but even he shirked the task of finding the Bann and Lough Neagh to be Chichester's.

On the 20th November, 1621, the Carrickfergus verdict was expanded into a Patent, issued in Dublin, by which the King's Letter authorising a " confirmation " of Chichester's existing privileges in " the fishings of the loughs, waters, and rivers of Lough Neagh," was perverted into a monstrous grant of the Bann and Lough Neagh, with the soil beneath their waters, and the power to invade the lands of others on the banks. This marvellous parchment conveyed " all the

fishinge and fishinge places of what kind soever in the Lough or Pool of Lough Neagh and in the river of the Bann and the soils of the said lough or pool of Loughneagh and of the river of Bann aforesaid and every of them with their appurtenances, from the lough or pool aforesaid unto the rock and fall of the water called the Salmon Leap in the said river of Bann being in the County of Down Tyrone Antrim and Londonderry . . . together also with certen ould Eel weares in and upon the said river of Bann . . . and also full power to come to the Banks of the Lough or pool and river aforesaid out of all parts of the said lough or pool and river . . . and thereupon to lay and put their nets," etc. Chichester then made a settlement to trustees, executed on the 19th December, 1621, in order to interpose additional legal obstacles if the Patent were challenged.

This was his crowning effort to make title to the fisheries. The Corporation of London (unversed in Irish legal practice) had not been astute enough to get their Charter sealed and enrolled in Dublin. No Act had passed to validate it. If a legal objection to their Charter as to the Bann should be raised, he now had a great advantage.

Chichester quitted the country soon after—being appointed ambassador to the Palatinate in January, 1621-2. Some of his doings abroad are told in letters from the London envoy of the Doge of Venice. One remark of the Venetian Ambassador speaks of : " Ireland, that most distressful Kingdom, where the people are aggrieved by the unlawful impositions and innovations of the Viceroy, which will be speedily removed " (S.P.V., 1621-3, 219, 220, 326).

While Chichester was in Germany, a Royal message against malpractices affecting Letters Patent was sent to Dublin on the 10th May, 1622. Probably this censure accounts for the judicial condemnation of the Wakeman Patents in 1623, which took place in Chichester's absence. Indeed, it is possible that he was sent abroad to enable the rascalities of his Deputyship to be more freely investigated. The condemnation pronounced by James I. is known only through a Proclamation issued by Charles I., on the 25th June, 1625, after Chichester's death :

"Whereas our late most dear father, King James, of blessed memory, being informed by his Vice-Treasurer in Ireland that most of our father's Letters for granting lands in that Kingdom to several men and in several kinds were drawn up by lawyers, and, consisting of law terms, they could not be so well understood, neither by the same Vice-Treasurer nor by any other that should succeed him in his employment, how vigilant soever they were, but that something might slip their pens whereby our dear father might be prejudiced in his rents or tenures, or both; did, thereupon, by his Letters of the 10th May, in the twentieth year of his reign (1622) directed unto you, require and authorise you that, advising seriously from time to time with some of his learned counsel of that Kingdom, upon all Letters of grants, surrenders, or confirmations of land, whensoever they should be brought unto you, you should make stay of them till some safe course might be taken for the preserving of his rents and tenures, that he might not be prejudiced by suffering the same grants to pass" (M., 43).

In other words, James I. declared that the draft "King's Letters" sent from Ireland deceived him, and that he did not understand them or the use which was to be made of them when Patents were being framed thereupon. We know, too, that after the retirement of Sir John Davies, James I., on 15th May, 1620, made a highly significant order respecting the Attorney and Solicitor-General for Ireland, viz.: "to the end that they might be without all manner of excuse when he should require satisfaction at their hands, concerning the granting of any of his lands and tenements in that Kingdom, under the Great Seal, . . . that in all directions for the causing of Letters Patent to be made, with the advice of some of his learned counsel, his pleasure and intention thereby was, that the same should be done by the advice of the Attorney and Solicitor-General, or by one of them, and not by the advice of any other of his counsel, unless, upon some extraordinary occasion, or for the advancement of his service, the Chief Governor should at any time find cause to make use of their assistance in that kind" (L.M., pt. 2, p. 74). The reason for such an order evidently was that

the Law Officers, when their own conduct was attacked, shifted the blame for the issue of certain Patents on to the shoulders of unofficial King's Counsel.

After the King's censures in 1622 Chichester, knowing that his Patent was quite worthless as to the Bann, washed his hands of Lough Neagh also. This he effected by granting to the City a Lease for ever of Lough Neagh at £100 a year. The assignment is briefly mentioned in the *Concise View*, p. 50 :

" 1622, the Lord Deputy Chichester granted Lough Neagh to the Irish Society in Fee Farm for ever at £100 a year."

Chichester had, of course, then ceased to be "Lord Deputy." How little their title was regarded appears from a letter in the " Conway Papers." About the 1st May, 1658, Major Rawdon wrote to Viscount Conway : " Sir John Clotworthy claims the fishing at Tunny by his grant of the Lough fishing. I heard the Londoners demanded forty shillings rent when they had it, but never knew it paid."

Chichester died on the 29th February, 1624-5, and then a fresh scandal came to light. For it appeared, after his death, that he had embezzled £10,000 from the Crown. This was an ugly business, and the Government called on his heir to pay. A " Memorandum Roll " in the Exchequer " Common Entries," Trinity Term, 3rd Charles I., gives particulars of a suit between Edward, Lord Chichester, and Arthur Ussher, to compel Ussher (as trustee of the settlement executed 19th December, 1621) to join in selling " Chichester House," in College Green (afterwards the site of the Dublin Parliament), to defray the late Deputy's debts. These included a " debt " of £10,000 to the Crown, which he had misappropriated. Whether the malversation took place in his office of Lord High Treasurer, or while he was Deputy, or in both offices, is not clear.

It was " our dear Arthur Bassett " who assigned Chichester House to his uncle, and this doubtless represented an expedient similar to that practised in 1608 under the Commission for Defective Titles. The building was originally an hospital founded by Sir G. Carey, the Deputy who preceded him.

At Inquisitions at Lifford on 21st May, 1625, and in Cavan, 19th April, 1626, it was found that he collected the rents of the escheated lands of Ulster for two years until the Undertakers came (I.I.). His man-of-all-work, Weston, and others were found to be involved in the same practices (I.I.). This points to the fact that part of the embezzlement occurred while Chichester was Deputy.

Hibbotts, as Chancellor of the Exchequer, ordered Ussher to execute the conveyance, but whether the "debt" was afterwards paid to the Crown by Edward Chichester nowhere appears.

Chichester's last will (29th Oct. 1621) is dated three weeks before his Patent. It contains no reference to, or disposition of, the Fisheries, although minute directions as to other property are given. It appoints as Overseer "my well-beloved Sir Thos. Hibbotts, Chancellor of the Exchequer, whom I have ever found honest and careful of me and my estate." Tokens of remembrances are directed to be given to his "noble friends and ancient acquaintances," and amongst these Hibbotts and Hugh Clotworthy "are to be remembered" (H.B., 682). Sir Thomas Hibbotts had also been included as one of the burgesses of Belfast Corporation when it was called into existence in 1613.

Of Chichester, Mr. Bagwell says :

"His integrity is unquestionable" (I.S., 148). With more insight, Mr. Prendergast charged that he "so largely profited by the Plantation that the highest Councillor in the Kingdom told him, to his face, in the King's presence, that it was against the honour of the King and the justice of the Kingdom" ("C.S.," lxx.).

CHAPTER XXIX.

IN ACADEMIC GROVES.

Before describing how Lough Neagh and the Bann were recovered by the Crown in the reign of Charles I., let us see how James Hamilton fared.

His biographer says that, even after his creation as Lord Claneboy, "he had much ado to keep himself in King James's time, and was once at the point of ruin in the King's esteem; and, in Wentworth's time, he had much ado to keep himself from . . . ruin" (H. MS., 29).

Unfortunately, Wentworth's proceedings against Hamilton can only be traced by the light of his coercion of Edward Chichester to surrender Lough Neagh and the Bann, which will shortly be narrated. History has fortuned more prosperously in the preservation of St. John's letter concerning him.

The campaign against Hamilton started while he still enjoyed the protection of Chichester: "The petitions and claims of Sir Thomas Smith against Sir James Hamilton began in April, 1610; and, on the 6th April, 1611, Sir Thomas got an order of reference to the Commissioners of Irish affairs (of whom Sir James Hamilton was one) to make report of his case" (H. MS., 23).

Hamilton was made Sergeant-at-law by James I., and the editor of the Hamilton MS. (Mr. Lowry, Q.C.) translates the Latin reference to him in the Patents as "Sergeant-at-law" (p. 21). Chichester's representatives translate it "my beloved servant," in order to import a warmth of Royal favour into the Patents and make them more fair-seeming.

In 1622, informations were laid, at the suit of the Crown,

to set aside some of Hamilton's Patents in minor cases, but nothing effective was attempted. His biographer does not regale us with many particulars, nor give any clue as to how the proceedings of 1618 were stayed.

In another direction, the *History of Dublin University* lets in light on some of the activities of its old Professor. At p. 31 we learn that Provost Temple stated that he " had heard from Dr. Chaloner and others that Sir James Hamilton was a great persuader and setter on, by his letters and otherwise, of the Provost and Fellows to be suitors for a part of the escheated lands in Ulster, towards the filling up of the Book of £100, concealed attainted lands, which had been upon their hands for ten years fruitless, and that he promised to aid them in getting these lands." Then when Hamilton's plans succeeded, his disinterestedness became manifest :

" Sir James Hamilton appears to have offered the College to take a fee-farm grant of all the Ulster lands, and to pay a perpetual rent of £500 a year. His first offer was £280, which was then raised to £400, and ultimately to £500, which included £100 a year in lieu of fine." At the bargaining stage it was inevitable that Chichester should be consulted, owing to his impartiality. Most naturally his religious instincts led him to recommend the acceptance of the offer made by his confederate. So we read that, after the Provost and Fellows sought the advice of the Lord Deputy as to the conduct which they should pursue in the interests of the College, they agreed to approve the letting of the College lands in Ulster to Sir James Hamilton, in perpetuity, if he would undertake to pay a fee-farm grant of £632 per annum. Accordingly they sent him, in 1610, the following letter :

" Sir,—The offer you have made unto us, for being our tenant of the whole proportion of the College lands in the North of Ireland, contained in the particular you sent, hath been advisedly considered by us. We interpret it as proceeding from you, rather out of a special regard you bear to the good of the College, than out of a respect therein to your own particular. Howsoever, we have been moved by many, and some of them of very honourable rank amongst us, about

the disposing of the said lands, yet we cannot but hearken unto you, in whom we find so much love to the College, such endeavours to advance the cause thereof, and so special a resolution to do all the good you can. We do therefore willingly accept of your offer, upon the performance on your part of such conditions as are mentioned in your letters concerning that point. Therefore, this our letter, confirmed by our public College Seal, shall assure you of our acceptance thereof, and of your right and power to dispose of all those lands for letting them to tenants, retaining to us the conditions mentioned in your letter; and likewise of our readiness to give you the best satisfaction we can for the form of your conveyance, like to that which we have done to the tenants of Munster, immediately on your repair to Dublin, or (if you will draw the draft thereof and send it) if you please before.

"Thus commending our best love—

"William Temple, Provost.
"Lucas Chaloner.
"James Ussher."

Strange to say, however, the remainder of the Fellows objected to this letting, on the ground that the rent was far under the value of the lands, and Hamilton having pressed the College for a conveyance, the Provost appealed to the Lord Chancellor and the Visitors. Amongst the reasons that the Provost assigned in favour of the perpetuity grant were the following:

"That Sir James Hamilton procured the grant of the lands to the College, passed it at his own charge, and at half the price of the survey.

"The College, by refusing this conveyance, would break faith with him.

"If Sir James Hamilton were to inform his friends at Court of this treatment of him by the College, and through them, or from himself, the King should be informed that the reason which influenced the College in this matter is some dislike they have of the Scottish people, the College will hazard the loss of the King's favour, provoke the displeasure of the

Scotch, and risk the discontinuance of their annual pension from the Crown."

Nevertheless, the jobbers were defeated, and the grant was not carried out.

Hamilton, however, was not left without consolation. He obtained a terminable lease of a large portion of the College lands. From a Deed of Sir James Carroll, dated 6th December, 1615, whereby he surrendered to the College the lands of Colures, Armagh, it appears that, on the 17th March, 1613-14, a lease of these lands had been made to Hamilton by the College, who assigned them to Carroll. "A paper dated April 22nd, 1618, shows that Carroll was the tenant of the College for all the Donegal lands, as well as for several holdings in Armagh, as the assignee of Hamilton."

We are also told that " The disposal of these Ulster lands formed the cause of the first dissension between Provost Temple and the Fellows, and led to bitter feelings on both sides " (H.D.U., 31-4).

Thus did the vultures dispute over the spoil of Tyrconnel's clansmen and the plunder of the monasteries. Hamilton in his later years " specially interested himself in the furtherance of Presbyterianism," and " planted his estate with pious ministers from Scotland " (D.N.B., 179). He died in 1643, and his son was created Lord Clanbrassil by Charles I. Cynics may experience a " morose delectation " on being told that the Commonwealth Government treated his son as a " delinquent Protestant," and forced him to compound for his estate. It was valued by Cromwell's Commissioners at £4,717 per annum. A payment of £9,455 was exacted from Lord Clanbrassil by the Republicans as the price of its quiet enjoyment (R.K.R., 1882, p. 43, and A.P., 4).

Some of Hamilton's patents, apart from the enormous territories they convey, are noteworthy in form, as showing that, half a century before Cromwell shipped the Irish to the Barbadoes, the idea of reducing them to slavery was anticipated. It was broached by Chichester to Cecil on 15th January, 1602 : " Their barbarism gives us cause to think them unworthy of other treatment than to be made perpetual slaves to her Majesty " (S.P.I.A., 286). He recommended

the transportation of O'Cahan to Virginia and his policy was embodied in the parchments drawn up by Hamilton, whose Patent of 1605, after the usual grant of " all and singular castles, houses, edifices, profits, deodands, etc.," conveys to him " native men and women and villeins and their followers." This was more naked than the formula in Queen Elizabeth's charter to Sir Thomas Smith (p. 17), although one version of that contract grants Smith " native men and women " (O.B.). A Patent from Charles I. to Hamilton (as Lord Claneboy), conveys " natives and villeins with their sequels " (H. MS., App. V., XVI., XXV.).

The Ulster charter to the City of London in 1613 granted " estrayed bondmen and bondwomen and villeins, with their followers." To this plight had fallen the race of which in 1596 the author of the " Faerie Queene " wrote: " The Irish are one of the most ancient nations that I know of at this end of the world. . . . They come of as mighty a race as the world ever brought forth . . . very present in perils, great scorners of death " (S.V., 1633, pp. 26-32). Yet Davies expresses astonishment that after the banishment of their Chiefs and the seizure of their lands " all the common people have a whining tone or accent in their speech, as if they did still smart, or suffer some oppression."

Even an Attorney-General might bethink him that such people might lament the generation which saw fanes like Lismore, where Alfred the Great and many another Saxon prince found learning without cost, handed over to a London horse-thief. His conveyances had made other faithless hypocrites masters of hoary abbeys which Columba and Gall, Fiacra, and Fridolin fondly blessed as they left to evangelise Europe. Davies, however, sincerely felt that " the common people " should take no heed of change, and might well worship the new Saints set up in olden shrines, with joyful snuffling. The seizure of their lakes and rivers also furnished legal occasion for much public gaiety.

CHAPTER XXX.

STRAFFORD, THE "THOROUGH."

THE judgment of the Exchequer against the Wakeman grants was pronounced just before the death of Lord Chichester. His brother Edward, on succeeding to his estates in 1625, showed that he realised that the Patents by which the fisheries had been conveyed were worthless. On the 12th October, 1625, he procured from Charles I. for his son, Sir Arthur Chichester (afterwards Lord Donegall), a licence to fish in Lough Neagh and the Bann, annexed to his appointment as Governor of Carrickfergus, at a salary of £30 6s. 8d. This fact is full of meaning, for, if James I. had presented the fee-simple of the lake and river to the elder Chichester, by valid Patents, his heir obviously would not have had a licence to fish therein taken out under a military Commission.

The Crown rent for all the Chichester estates, under the Patents of 1621, which purported to grant Lough Neagh and the Bann, was £87 19s. 11d. a year. Edward Chichester's obtainment for his son of an appointment at a salary, under which he became a licensee of the fishing, while exercising the temporary office of "Governor of the King's forces at Carrickfergus, etc.," displays the measure of his confidence in the Patents to his brother.

The Commission of Charles I., having given Sir Arthur a territorial jurisdiction as Governor on land, appointed him "to the office of Admiral and Commander-in-Chief of Lough Sidney, otherwise Lough Eaugh, otherwise Lough Neagh, in the said Province, for disposing of all shipping, boats and vessels that shall be found there; with the fishing of the Lough as far as the Salmon-Leap on the Bann; also

Governor and Chief Commander of the fort recently built on the west of the Lough, and all the lands to the fort annexed ; with authority to follow, kill, and overthrow, to the uttermost of his ability, with fire and sword, all domestic and foreign enemies, all traitors or rebels, disorderly persons, and accomplices, servants or abettors, wheresoever they may be found, upon land or water ; with permission to parley and confer with the rebels and traitors in the Province, and give them protection and safe-conduct in coming and returning ; To Hold for life ; and, that good correspondence and agreement may be established, Sir Arthur is required to give the Governor of Lough Foyle, for the time being, his best assistance in prosecuting the rebels in those parts " (M., 38).

The reason for the acceptance of such a Commission was clear enough. After the death of James I. (who passed away soon after Chichester himself), Charles I. was advised to take strong measures to repair the wholesale devastation of Crown property wrought by the late Deputy. Doubtless Edward Chichester felt a prescience of the gathering storm. On the 1st October, 1625, Charles I. sped a Commission for the continuation of the Irish Court of Star Chamber recognised by James I. on the 10th August, 1603 (M., 63). By means of this tribunal the Crown was now able to make its power swiftly felt by every Patentee in Ireland.

Four years later the blow fell. A Scotch baronet, Sir Arthur Forbes (ancestor of Lord Granard) discovered to the King how Chichester had possessed himself of the Ulster fisheries. Thereupon an order of Charles I., dated 21st October, 1628, to Lord Falkland (appointed Deputy 18th April, 1622) issued :

" Whereas Sir Arthur Forbes, baronet, hath, by his humble petition, made discovery to us that certain Royal fishings do belong to us in the Province of Ulster, in that our Kingdom ; We, having therein received the advice of our Commissioners for Irish Causes, who have seriously examined the said proposition, and certified their opinion therein, are graciously pleased, and accordingly we hereby require you, that you forthwith call to your assistance the Vice-Treasurer of that our Realm, the Master of our Court of Wards, and the

Chief Baron of our Exchequer, and, with their advice, inform yourself of the quality and value of those Royal fishings; and, after due examination of all particulars, to cause our learned counsel to prosecute the eviction of the said fishings into our possession, by a due and legal course of proceeding, wherein the said Sir Arthur Forbes is to give his best help and furtherance; and after the said fishings, or any of them, shall be so evicted, we require and authorize you to cause a grant, under the Great Seal of that our Realm, with the advice of some of our learned counsel there, to be passed unto Sir Arthur Forbes and his assigns, of such a proportion of the said Royal fishings, and at such a yearly rent, as you, with the assistance and advice aforesaid, shall, in your judgment, think fit.

"And for a further recompense of his particular service in this particular, we are graciously pleased that you shall bestow upon him, by concordatum, out of the overplus of the value and first profits of the rest of the said Royal fishings not leased unto him, the sum of £300 English; and we further require and authorize you, as soon as the rest of the said fishings shall be evicted as aforesaid, that you cause grants to be made thereof, for one and twenty years, severally unto such persons as you shall think fit, under our Great Seal there, with the advice of our learned counsel, reserving such rents, severally and respectively, upon the same, as you can get, for the best increase of our revenues" (M., 402).

A report of the Commissioners for Irish Affairs in 1635 proves that Sir A. Forbes' disclosures and the Royal missive were not levelled at any fishings held by the City of London. This report advised the Privy Council:

"We have considered the Petition of the Citizens of London referred to us, and state our opinion as follows: It appears that the Citizens of London have a grant of the fishings of the Bann, from the high sea to Lough Neagh, by the King's Letters Patent; therein they are warranted from all incumbrances. . . . We think the Citizens should be settled in the occupation of their fishings." The endorsement, in Secretary Coke's hand, was: "This article is approved" (S.P.I., 206).

The campaign by the Crown for the recovery of the fishings "set" by Forbes lasted over ten years. It ended in the despoiling of the despoiler. As popular discontent spread knowledge of the malpractices of the late Viceroy, the King's ear distended at the scandals of his father's reign.

Sir Randal MacDonnell, from whom the "fourth" of the fishery of the Bann had been filched, recovered his rights; but O'Neill and O'Donnell were dead, and most of their exiled children had been assassinated. The story of the "taking off" of the descendants of the fugitive Earls and of O'Sullivan Beare while in exile, by the emissaries of James I., which has never been told in a connected narrative, has no place in these pages.

On the 8th September, 1629, there was granted to Randal, Earl of Antrim, his heirs and assigns, for ever, "The whole country or territory called The Rowte, in the Province of Ulster," containing, by estimation, nine territories or toughs: "the entire country of the Glynnes and the Island of the Raughlins (Rathlin) in the County of Antrim, EXCEPTING THREE PARTS OF THE FISHERY OF THE BANN" (M., 490). So ended in shame Sir John Davies' great case of the "Royal Fishery of the Bann." The fishing was regranted to MacDonnell in the very words that Davies and Chichester and "all the Judges," in the Star Chamber, maintained nineteen years previously passed nothing at all.

Lord Antrim must afterwards have effectively worked the fishery, for a "recommendation" made in 1635 by the Commissioners for Irish Affairs in Sergeants' Inn to the Privy Council sets out: "With regard to the Earl of Antrim's fishing near the mouth of the Bann, your Lordship may be pleased to ask the Earl of Antrim not to fish there so much to the Londoners' prejudice." Secretary Coke endorsed this: "Agreed to."

Another injustice of Chichester towards the son-in-law of Hugh O'Neill was redressed by a King's Letter of 30th September, 1629:

"Is informed by the Earl of Antrim that, being seized of an estate in the County of Antrim, by Letters Patent from James I., of which part was in the occupation of a tenant

called O'Hara, Lord Antrim having obtained a Warrant from King James about 1610, to the then Deputy, for the making of a grant to the Earl; O'Hara being extraordinarily favoured by a great officer in that Kingdom, opposition was given for the passing of the Letters Patent, unless the Earl would convey the inheritance to O'Hara; but, having no estate of inheritance in the land, same being vested in the Crown, the said Earl, to prevent delays and inconveniences which might befall him by not getting the Letters Patent, complied. . . .

"Taking into his princely consideration the manner in which O'Hara had obtained the conveyance without valuable consideration," King Charles commanded the Lords Justices "to take present order that an honest sworn surveyor might survey the lands, and that O'Hara be required to convey a specific portion of them to the Earl" (M., 504).

O'Hara, so "extraordinarily favoured by a great officer," was a henchman of Chichester's, a handyman at making depositions (M. MS., p. 90; S.P.I., 1615, p. 60) and useful as a juror. The proposed nullification of his grant shows the small esteem in which the Patents so briskly manipulated in the reign of James I. were held by his successor. The grant was still in litigation when Strafford arrived in Dublin (S.L., v. i. p. 153).

The Crown seems, while Lord Falkland was Deputy, to have been baffled for a long time after Sir Arthur Forbes' denunciation of Chichester's "concealments." Stronger steps were taken when Wentworth, Lord Strafford, was appointed. Strafford came to Ireland on the 3rd July, 1633.

When his sway began the Irish Exchequer was empty and the Government in debt £100,000. To make himself independent of Parliament, Strafford devised the expedient of raising money by attacking the titles of those who either held questionable patents or could show no grants for their properties. Writing to Secretary Coke, on 23rd October, 1633, he declared that in all the Plantations the Crown "had sustained shameful injury by passing in truth ten times the quantities of land expressed in their Patents and reserving throughout, base tenures in soccage . . . the Plantations

being . . . one of the chief cares entrusted with me by his Majesty" (S.L., v. i. p. 132). Hence he said he "thought good . . . to play an aftergame. . . . As for the Commission for Defective Titles we are still on work, but put off by the parties alleging their Counsel to be out of town this vacation."

Carte, writing in 1736 of this period, said:

"If the patents passed in Ireland were not exactly agreeable to the *fiant*, and both of these to the King's original warrant transmitted from England—in short, if there was any defect in expressing the tenure, any mistake in point of form, any advantage to be taken from general savings and clauses in the patents, or any exceptions to be made in law (which is fruitful enough in affording them) there was an end of the grant and of the estate that was claimed under it. . . . Everybody was at work in finding out flaws in people's titles to their estates; the old Pipe-Rolls were searched to find out the old rents reserved and charged upon them; the Patent Rolls in the Tower of London (where they are preserved in much greater numbers than in Ireland) were looked over for the ancient grants, and no means left untried to force gentlemen to a new composition, or to the accepting of new grants, at an higher rent than before; in which, indeed, it generally ended.

"Most persons either conscious of the deficiency of their title, or dreading the trouble, expense and issue of a dispute with the Crown, at a time and in a country where the prerogative ran very high, and the judges universally declared their opinion in favour of it, choosing rather to make up the affair than stand a dispute, and so making a composition at as cheap a rate and as easy an advanced rent as they could" (C.O., v. i. p. 26-7).

No avenue by which money could be raised for the King was left unexplored. Thus on 6th June, 1638, Strafford writes to Charles I.:

"Some years past, there was found in the ground a silver seal of one of the Kings of Connacht, which I have sent your Majesty. Now it seems one of their bits of gold, weighing ten ounces, was in like sort chanced upon lately in the County

Galway, which I herewith present your Majesty with. I have sent to dig there again, in case any more of the furniture thereto belonging might be found " (S.L., v. ii. p. 267).

Strafford put the machinery for dealing with Defective Titles on a statutory basis, and instead of depending on a Commission from the King, caused three important Acts to be passed in the Irish Parliament in 1634 and 1639. The Preamble to the Act of 1634 (10th Chas. I. c. 3) suggests that Strafford's surgery was entirely for the good of his patients :

" Divers subjects are subject to much question or exception, either because that they can derive no title from the Crown, or because their Letters Patent . . . are insufficient in the law, defective, doubtful, or not so plain." It then enacts that the Lord Deputy and Council shall take order, upon compositions for fines, or rents, to secure and establish said lands by Letters Patent, which Patents are to bind the King and all parties to the same—saving the rights of others.

Another Act of the same year (10th Charles I. Sess. 3) recites :

" Doubts and questions may be invented, either for not enrolling or recording the Commission, etc., or for lack of finding Office or Inquisitions, or true Offices or Inquisitions, whereby the title of the Crown ought to have been found, before the making of such grants or Letters Patent." This Act provides that subjects who make compositions shall have their Patents good against the King, as if confirmed by Parliament.

Thus Strafford acquired a powerful lever to coerce the holders of misgotten or tainted Patents. Such persons, by consenting to a " composition " with the King, obtained new grants which guaranteed them against further inroads or investigations by the Crown, and made good previous irregularities.

He harassed the second Lord Chichester with inquiries more peremptory than those addressed to Hamilton by Deputy St. John.

Even in small matters the hostility of the Viceroy towards him was shown. The Duke of Northumberland, being Lord

High Admiral, having (without mentioning any names) consulted Strafford respecting Irish Admiralty posts, the Lord Lieutenant pointedly replied, 30th July, 1638 : " As for my Lord Chichester, if you remove him the matter were not great, and place Captain Owen there " (S.L., v. ii. p. 290).

This must have struck the Duke oddly, for he replies on 2nd January, 1638-9 :

" In one of my letters to your lordship I desired to know what cause I might allege for the displacing of my Lord Chichester and disposing otherwise of the Vice-Admiralty. For, not having done the like to any other, I should not like to turn him out without just exception. He hath moved me for the renewing of his [Admiralty] Patent and the joining of his son with him. The first of those requests I have forborne to consent to, and the second I have flatly denied " (S.L., v. ii. p. 266).

Strafford did not answer this inquiry.

A like disfavour penetrates a letter of Lord Bristol, dated 10th April, 1638. Arthur Chichester had married his daughter, and he pleads that a suit which had been started by John Chichester (claiming the estates) might " be left to the judgment of the Courts of law." Lord Bristol adds, " my son Chichester and his father are absent in Ireland, and have no friends in Court " (H. MS. C., 1888, p. 181). On the 2nd March, 1638-9, Strafford exhibits the extravagance of his predecessors to Secretary Windebank : " The late Lord Chichester had lands to the value of £10,000 in one gift, and Lord Falkland £10,000 in money at once " (C.C.P., p. 169). No longer anywhere was respect felt for the family or the memory of the warrior-scribe who boasted that he spared no living thing, man or woman, kine or corn, along the shores of Lough Neagh ; who exported the Ulster swordsmen in droves to Sweden ; and allowed the clansmen of the O'Neills, like indentured slaves, to be parchmented to Scotch adventurers.

How the validity of his Patents was first challenged by Strafford is not clear ; and with the destruction by a fire in Dublin Castle in 1711 of the Council-books, and other records, much valuable material for history (C.O., iii.) perished.

Bramhall, Bishop of Derry, says he acted as "mediator" between the second Lord Chichester and Strafford. Bramhall had been brought into Ireland as Chaplain by the new Lord Lieutenant, as a friend of Sir C. Wandesford, Master of the Rolls, and on the sequestration in the Star Chamber at Westminster, of the Ulster grant to the London Corporation, Bramhall was entrusted with a kind of Receivership over their Bann fishery, having become Bishop of Derry.

That he was well acquainted with the official frauds practised under the cover of "King's Letters" is evident from his despatch to Archbishop Laud on 23rd February, 1638: "Now that the Commissioners have ordered that no appropriations shall pass upon the Commission for Defective Titles till I be consulted withal (which secret correspondence determined but upon Tuesday last is communicable to none but your Grace), I think I shall soon be able to show that the Crown has been defrauded of many appropriations.

"For here it hath been usual to pass an *aliud et aliud* with an *alias* [*i.e.*, several parcels of land instead of one, under a misleading description]. Upon a Letter for £20 [a year] to pass thirty or forty. To pass that for nothing in time of peace, which was found to have been worth little or nothing in time of rebellion and war, and take up appropriations, as gentlemen do waifs in England" (S.P.I., 181).

This sweeping accusation, in a private note from a Bishop to an Archbishop, bears out the relation by Sir Anthony Weldon as to similar practices thirty years earlier (p. 60). Bramhall may have prevailed with the Deputy not to exact still greater forfeitures from Lord Chichester, when his Patents were being ransacked, than the surrender of Lough Neagh. Still in his *Life* the Bishop of Limerick says of Bramhall: "None could more readily discover a flaw in titles; and, having found it, none could drive the wedge further."

When Strafford showed that the Crown was determined to repossess the Lough, Edward Chichester yielded. It was no small gain, when his entire title was challenged, to receive a statutory Patent for the rest of his estates on condition of the surrender of the ill-gotten fisheries.

To reproduce the process under which he was forced to

disgorge, the help of analogy with other "compositions" of the period must be sought.

Strafford's "Commission for Defective Titles," being a statutory and legal body, took evidence and examined witnesses. It must have easily penetrated the mysteries of the Wakeman-Irelande-Hamilton-Basset-Chichester Patents. The exposures of the Barons of the Exchequer in 1623 would be fresh in the minds of the Commissioners and of the Law Officers of the Crown. Many years passed, however, before a decision was given.

Matters were evidently brought to a head after the order of the Star Chamber at Westminster in 1635 sequestrating the Irish Estate of the Londoners. The *scire facias* which followed on it, to annul their Patent, issued in Hilary Term 1638-9 (Skinner's case, 199), but the Bann had previously been taken over by the Irish Executive.

On 1st September, 1638, Charles I. issued a fresh Commission to Strafford and others, reciting that persons "enjoying or being the owners of lands . . . are notwithstanding subject to much question or exception, either because they have no Letters Patent from Us nor can derive any title from the Crown, or because the Letters Patent . . . are void or insufficient in law, or not so plain." It authorised the Commissioners "to treat, bargain, contract, agree and conclude . . . for new grants," with persons having defective title (L.M., pt. iv. 138, v. 1).

Shortly afterwards came a King's Letter of 25th September, 1638. This sanctions a "composition" previously agreed on with the Commissioners, whereby Edward Viscount Chichester undertook to yield up the Lough on getting a new patent conferring a Parliamentary title to the rest of his estates and an allowance of £40 a year off his Crown rent. This bargain, made unmurmuringly, tells a tale of his Defective Title. Could he have contested the possession of Lough Neagh on legal grounds, he, of course, would have done so. His capitulation, however, did not save him from a phrase in the King's Letter disclosing that until then the Crown was unaware that the "great Deputy" had grabbed Lough Neagh. It sets forth :

" Whereas we are informed that as well the fishing as the soil of the great Lough called Lough Neagh, alias Lough Chichester, in our Province of Ulster in that our realm of Ireland, *have been granted away* by Letters Patent to Arthur, late Lord Chichester, and his heirs, which is so commodious for upholding the fishing of the Bann in our said Province of Ulster, that the Governors and Committees of the London Plantation there, were necessitated to farm the same at £100 by the year, which fishing of the Bann is now come to our hands.

" And whereas the now Viscount Chichester, by Henry Le Squire, his agent, esq., hath compounded with you and our Commissioners for the Remedy of Defective Titles, which composition this is a part, that he should surrender to us and our heirs as well the soil as the fishing of the said Lough.

" These are, therefore, in pursuance thereof to authorise you to accept to our use from the said Viscount Chichester of a surrender of the soil and fishing of the said Lough, and all rectorial tithes growing or arising within the Island Magee, etc. . . .

" In consideration thereof, and other considerations to be expressed in the new patent, our will and pleasure is, and we do hereby require you, to grant, assure and confirm unto the said Viscount Chichester and Arthur Chichester, his son, or either of them, or their heirs, by new Letters Patent upon our Commission of Grace, his other lands, rectorial tithes, advowsons, etc., held or possessed or mentioned to be held or possessed by them or either of them, their tenants or lessees, within our said realm, according to such composition as the said Viscount Chichester's agent hath made or shall make with you and our other Commissioners.

" And likewise we do hereby require and authorise you to grant, confirm and assure unto them and their heirs the rectorial tithes of the parish of Shankill, alias Belfast, with the advowson of the vicarage of the same church in our said County Antrim, in lieu of the said Surrender, and the tithes and advowson of the Island Magee aforesaid, and in like manner in lieu of the same surrender of the soil and fishing of Lough Neagh, alias Lough Chichester, our pleasure is, and

we hereby authorise you to grant unto them and their heirs one annuity, pension, or yearly rent charge of £40 per annum, current money of England.

" And in case the same shall not be duly paid unto them and their heirs, that they and their heirs, upon default thereof, shall have and take allowance of so much out of their yearly rent from time to time payable to us, our heirs and successors, into our Exchequer there for their lands.

" Always excepted and reserved to the said Viscount Chichester, and Captain Arthur Chichester, and their heirs, liberty to fish for and take salmon in and upon the said Lough or any part thereof for the provision of their house or houses ; and also excepted unto them and their heirs all the eel-weirs, eel-fishings, or places to take eels in or at or near Toome, which formerly were not demised or granted to the City of London, or the Governor and Committees of the said London Plantation in Ulster aforesaid.

" Yet so as such order, laws, and rules as shall be from time to time prescribed or set down generally in our behalf for the fishing of the Bann be observed by them and their heirs, as well in their fishing for salmon as also in their eel-fishings, etc." [Rest deals with tithes.]

The first " Order of Composition " founded on this Letter was set aside by Strafford, who evidently objected to the privilege of fishing accorded to the Chichesters. He knew that the King's Letter had been improperly drafted, in the attempt to confer on them fishings in the non-tidal Bann " which formerly were not demised or granted to the City of London." This was a trick, for there were no such fishings. Strafford therefore stayed the order of the 7th December, 1638, and caused an amended Order to take its place on 19th September, 1639. Between the two dates there must have been much debate as to the terms of the Second Order. These can be spelled out, from the words of the Surrender afterwards based upon it. Warned by experience of the practices of the Chichesters, Strafford was resolved to nip any design by which they could found a claim later on, to any of the fisheries. His annulment of that part of the first Order which secured them liberty to fish, shows his determination to free Lough Neagh

and the Bann for ever from their clutches. It is evident that his design was to repossess the entire of both waters for the Crown, unclogged by any private pretension.

Viscount Chichester and his son, Captain Arthur, of course, protested against losing the fishing guaranteed them by the King's Letter. Strafford however, would yield nothing on which a future claim to the Lough or the Bann could be grafted. He consented to award them cash compensation for their disappointment, but beyond that he would not budge. Yet these carefully considered arrangements afforded the loophole through which his plans were afterwards frustrated. For they had a most unlooked-for sequel twenty-two years later.

The King's Letter not only conceded to the Chichesters a Parliamentary Patent for their estates, but made them a grant of an "annuity pension or yearly rent-charge of £40 a year." Payment of this £40 was guaranteed by authorising its deduction from the rent which they contracted to pay the Crown under the Patent. Naturally, when they learnt that the right of fishing was withdrawn, they demanded that the £40 allowance should be increased. A two-fold argument strengthened this contention. The sequestration of the Londoners' estates meant that the £100 a year rent, payable to them by the Irish Society for the Lease of Lough Neagh (made in 1622 by the late Lord Chichester) could no longer be enforced. Secondly, the terms of the King's Letter were being departed from. Strafford accordingly gave way to the extent of agreeing to increase the "annuity" from £40 to £60. He also consented, in order to avoid disputes, that it should be paid not by means of an annual deduction by way of cross-account or counterclaim (as the King's Letter suggested), but by a permanent reduction of the rent under the Patent by £60 a year. This was a most valuable arrangement for the Chichesters. It deprived them of nothing in the shape of fishing that they had enjoyed, for the Bann had been the Londoners' since the Charter of 1613, and Lough Neagh was leased to them since 1622.

Thus the inroad made by the Sequestration on their frail title to the rent of £100 a year, found good amends in a

permanent allowance of £60 a year, plus an impregnable Patent for the rest of their estates, guaranteed by Act of Parliament.

This splendid settlement was embodied in the second "Order of Composition," dated 19th September, 1639. A formal Deed surrendering Lough Neagh was then prepared, and to make assurance doubly sure (in view of the fishery concession in the King's Letter), the Bann as well as the Lough was included in the Surrender. Commissioners were appointed to take the Surrender who were Chichester's intimates, which shows that the dispute ended amicably.

The Commission, dated 21st October, 1639, was addressed to "Our trusty and well-beloved Sir William Wraye, Knight and Baronet, and Henry le Squire, Esq."

Henry le Squire was Chichester's agent and "Sovereign" of his Corporation of Belfast. Sir William Wraye was his son-in-law and M.P. for Belfast, elected by the Corporation (T.B.B.). The Surrender was signed on 1st July, 1640.

This matter has been thus analysed and explained, because in 1661, Captain Arthur Chichester (then become Lord Donegall) basely deceived Charles II. respecting the nature and terms of the agreement. He pretended that the Surrender was made without consideration, and tricked the Crown into granting a fresh patent for the fisheries when the real character of the arrangement of 1640 was forgotten or ceased to be understood.

That it was then accepted cheerfully by the family is borne out by the Pinkerton MS. (O.B.). No complaint against Strafford was made by the Chichesters, and they abetted none of the attacks levelled against him in the Irish Parliament, when that body was engaged in procuring evidence for his impeachment at Westminster. Similarly, when Bramhall was impeached in Dublin in 1641 (S.P.I., xxxv.) they did not lend themselves to the attempt to convict him. The trial of both took place within a year of the surrender, so that if they were smarting under any sense of grievance, it could have been vented either in the Irish House of Commons, of which Capt. Arthur was a member, or in the Irish House of Lords, where Viscount Chichester was seated. Others

then attacked the conduct of Strafford and of Bramhall in both Houses, but the Chichesters held their peace.

They felt that in securing a statutory title for the ex-Deputy's seizures from the Irish chiefs, the family had done well. To grumble at the loss of eels or salmon, when they had secured such splendid spoil after a mere thirty years' quest never crossed their minds.

The Surrender and the Commission under which it was accepted deserve study. The Commission ran :

" Whereas our right trusty and right well-beloved Cousin and Councellor Edward Viscount Chichester of Carrickfergus and our well-beloved Arthur Chichester, Esq., son and heir apparent of the said Viscount, for good considerations them thereunto moving, have consented to surrender grant and release unto us, our heirs and successors, all their right title and interest of and in to the great lough called Lough Veagh alias Lough Chichester and the soil and fishings thereof together with all the eel weirs and eel fishings pools creeks and places to catch eels and other fish at or about Toome in the County of Antrim and in the River of Bann as far as the rock in the said river commonly called the Salmon Leap, with liberty also for the fishers of us, our heirs and successors to dry their nets and make up their fish from time to time upon the banks of the said Viscount and Arthur Chichester's lands adjoining to the said Lough and River or either of them ;

" As likewise to surrender grant and release to us, our heirs and successors, the advowson of the Church of Magherahohill and the Rectory and advowson of the Church of Ballyprior in Island Magee in the said County of Antrim,

" Know ye that we, reposing especial trust and confidence in your wisdoms, diligence, and experience, do hereby give unto you or either of you full power and authority to take the said surrender grant and release of the premises on our behalf of the said Viscount and Arthur Chichester in manner before expressed,

" As also to take the like surrender grant and release of Arthur Hill, Esquire, of the said Rectory and advowson of Ballyprior in Island Magee aforesaid,

" And of your doings herein to certify our Commissioners

for Remedy of Defective Titles under your hands or the hand of either of you with all convenient speed.

"Witness our right trusty and well-beloved Cousin and Counsellor Thomas Viscount Wentworth, our Deputy-General of Ireland, at Dublin, the 21st day of October in the 15th year of our reign."

The Surrender itself was worded :

"To all people to whom these presents shall come. We Edward Viscount Chichester of Carrickfergus, Arthur Chichester, Esquire, son and heir apparent of the said Viscount, and Arthur Hill, Esquire, send greeting :

"Whereas by an Order of Composition and agreement made the 19th day of September in the year of our Lord God 1639 between the Right Honourable the Lord Deputy and others his Majesty's Commissioners for remedy of Defective Titles on his Majesty's behalf and us the said Edward Viscount Chichester and Arthur Chichester of the other part, amongst other things it was expressed that we, the said Viscount Chichester and Arthur Chichester should have a good and sufficient estate granted unto us and the heirs and assigns of the said Arthur to the use of us and the heirs and assigns of the said Arthur for ever of the manor of Belfast the Rectory and advowson of the Church of Belfast alias Shankhill and of all other the Castles manors lordships towns villages hamlets rectories advowsons lands tenements and hereditaments agreed upon to be granted to us the said Viscount and Arthur and the heirs and assigns of the said Arthur and mentioned in a former Order of Composition bearing date the 7th day of December in the year of Our Lord God 1638.

"And that there should be deducted and defalked the sum of £60 English money per annum out of the new increase of rents agreed upon in and by the said Order of the 7th day of December aforesaid to be reserved to his Majesty, his heirs and successors, out of the premises and that in consideration of the said grant so to be made by new Letters Patents and the defalcation and abatement of the sum of £60 aforesaid, we, the said Viscount and Arthur Chichester and Arthur Hill should make a surrender grant and release to his Majesty in

manner hereafter in these presents expressed before the passing of the said new letters patents.

" Now, therefore, know ye that we the said Viscount Chichester and Arthur Chichester, in pursuance and performance of the said Order of Composition and agreement of the 19th day of September aforesaid and for the considerations aforesaid, have given up, granted, surrendered, confirmed and released, and by these presents do give up, surrender, grant, confirm, and release unto our Sovereign Lord Charles by the Grace of God King of England Scotland, France, and Ireland, Defender of the Faith, etc., his heirs and successors for ever as well, the great Lough called Lough Neagh, alias Lough Chichester, and the soil and fishing thereof, together with all the eel weirs and eel fishings, pools, creeks, and places to catch eels and other fish at or about Toome, in the county of Antrim, and in the River of the Bann as far as to the Rock in the said River commonly called the salmon leap, with liberty for the fishers of the King's Majesty, his heirs and successors to dry their nets and make up their fish from time to time and at all times hereafter for ever on the banks of the said Viscount and Arthur Chichester's lands adjoining to the said lough and river or either of them.

" As likewise the advowson of the Church of Magheryhoghill and the rectory and advowson of the Church of Ballyprior, in the Island Magee, in the said County of Antrim, and all other tithes of what nature, kind, or quality soever arising, happening, coming, or renewing of, in, or out of the Island Magee, alias Magwee's Land whereof or wherein Arthur Lord Chichester, deceased, in his lifetime had any estate of inheritance, and also all and every of our interests, rights, titles, estates, use, and demands of, in, and to the premises and every part and parcel thereof.

" And further be it known that we, the said Viscount and Arthur Chichester, for us, our heirs, executors, and assigns and every one of us do by these presents covenant and grant to and with the King's Majesty, his heirs and successors, that his Highness, his heirs, successors, and assigns, respectively, and all and singular the premises and every part thereof shall be exonerated, acquitted and discharged of and

from all former grants, leases, estates, rents, charges, and other incumbrances whatsoever for or concerning the same premises and every or any part thereof made, suffered, or done by Arthur, late Lord Chichester, Baron of Belfast, deceased, or by us, the said Viscount and Arthur Chichester, son of the said Viscount.

"Know ye further that I, the said Charles Hill, have given up, surrendered, granted, confirmed, and released, and by these presents do give up, surrender, grant, confirm, and release unto our said Sovereign Lord, King Charles, his heirs and successors for ever all that the aforesaid rectory and advowson of the Church of Ballyprior aforesaid, and all other tithes of what nature, kind, or quality soever arising, coming, or renewing ot, in, or out of the Island Magee, alias Magwee's Land aforementioned, and all my right, title, interest, estate, and demand of, in, and to the same and of, in, and to every part and parcel thereof.

"And we, the said Viscount Chichester and Arthur Chichester, the son, for us and our heirs, do covenant and grant to and with our said Sovereign Lord the King's Majesty, by these presents that we, the said Viscount and Arthur Chichester and John Chichester and Edward Chichester, sons of the said Viscount, shall and will before the end of the term of St. Michael next ensuing the date hereof for the better and more perfect conveying and assurings of the premises to his Highness, his heirs and successors, make, do acknowledge, and execute all and every such further assurance or assurances of the premises whether it be by fine or fines, recovery, or recoveries or other assurance or assurances, of all or any of them in such manner as by his Majesty's learned counsel shall be devised or advised.

"In witness whereof we, the said Viscount and Arthur Chichester, son of the said Viscount, and Arthur Hill, have to these presents put our hands and seals. Dated the first day of July, in the sixteenth year of the reign of our Sovereign Lord, King Charles of England, Scotland, France, and Ireland, defender of the faith, etc. anno domini 1640."

(Signed) { Edward Chichester.
Arthur Chichester.
Arthur Hill.

"Sealed, delivered, and acknowledged by the within named Edward Viscount Chichester, Arthur Chichester, and Arthur Hill, to the use of our Sovereign Lord the King, before us by virtue of the commission hereunto annexed.

(O'N. *v.* J., 186). (Signed) { William Wray. / Henry le Squire."

No county area is mentioned in the Surrender except Antrim ; but in the Patent of 1621 the boundaries were expanded to include several counties. Whatever waters Lord Chichester surrendered in 1640 were not then alleged to lie outside Co. Antrim, although Lough Neagh is situated in five counties—viz., Antrim, Derry, Down, Tyrone, and Armagh.

The concession of " liberty for the fishers of the King's Majesty . . . to dry their nets and make up their fish . . . for ever on the banks of the said . . . Chichester's lands adjoining the said Lough and River," plainly did not extend into five counties. The surrendered tithes and advowsons also related to Co. Antrim. So that the Surrender is an " Antrim " Surrender throughout.

The questions constantly raised on Patents, in the seventeenth century, made draftsmen and lawyers most cautious to weigh every word. Descriptions in the granting part of a deed would be specially scrutinised. A Surrender would be drawn most favourably for the Crown if no county limits were inserted, but here Antrim is mentioned. The county boundaries of Antrim were then nearly eighty years old, and were as well understood and defined as they are to-day. It was " shired " by Deputy Sidney in the reign of Henry VIII. (C. MS.).

Of course the Chichesters, for their own protection, unless satisfied that they were possessed only of an Antrim fishery, would refuse to concede a grant of entry on undefined lands abutting on a vast lake in five counties, which fishery and lands the King could assign to strangers immediately afterwards. The frame of the Surrender, therefore, points only to a limited riparian fishing annexed to their estate in Co. Antrim bordering on Lough Neagh.

As regards the river, the verbiage of the Surrender shows that the Government did not regard the Bann as being in Chichester's possession, in spite of the Patent of 1621, as it speaks only of the eel-fishings therein. This is more strongly emphasised in the Patent granted after the Surrender, which will next be analysed. It describes the Bann surrender as limited to a weir at Toome.[1]

[1] Perhaps it is fitting to notice here how misleading attempted condensations of legal documents in the "Calendar of State Papers" may be. The Calendar version of the King's Letter of the 24th September, 1638 (p. 273), with its implied suggestion of irregularity begins: "Lord Chichester owns the soil and fishings of the great lough, Lough Neagh" (S.P.I., 199).

No such words are to be found in the Signet Book, from which the Calendar is supposed to be copied (L.R.O.). Thus not only does the Calendar misstate the King's Letter, but it conveys the contrary meaning to that which the Letter bears.

At the risk of tediousness, the words of important documents are, as far as possible, textually quoted in these pages, so as to save the investigator the trouble of resorting to the originals.

CHAPTER XXXI.

A SURRENDER WITH COMPENSATION.

After Chichester's Surrender, a new Patent was issued on the 22nd September, 1640. This now must be examined to see what the consideration for it was, as in the following reign it was pretended that the fisheries were yielded up out of Chichester's loyalty, and without anything having been granted to him in return. The Patent shows that an enormous area of land was given in exchange for the fisheries, and also, what was most precious (then and now), the grant was clinched by the gift of an impregnable Parliamentary title.

The Patent sets forth: "In consideration of the fine or sum of £467 17s. 6d. good and lawful money of and in England, in behalf of our beloved kinsman and counsellor Edward, Viscount Chichester, of Carrickfergus, and of our beloved subject and servant, by name Arthur Chichester, son and heir apparent of the aforesaid Edward, Viscount Chichester, at the receipt of our Exchequer of our said Kingdom of Ireland paid; as well as for and in consideration of the rents, services, moneys, reservations, and other charges in these presents unto ourselves, our heirs and successors reserved or mentioned to be reserved; as also for and in consideration of all the many good deeds in respect of faithful and acceptable service to us and to our Crown by the aforesaid Viscount Chichester and the said Arthur Chichester, and by Arthur Chichester, lately Baron Chichester of Carrickfergus, many a time manifested and paid; and also for and in consideration upon the surrender, concession and release both of the pool or lake of Lough Neagh, otherwise Lough Sidney, otherwise Lough Chichester . . . and the soil, bottom and fishing

thereof, and the weir and fishing of eels and of other fish in the stream or river of the Bann near Toome, in the County of Antrim, and the advowsons of the Church of Magherahohill, and the Rectory and advowson of the Church of Ballyprior, in Island Magee, in the said County of Antrim, to us, our heirs and successors made, and in our Chancery of our said Kingdom of Ireland enrolled by the aforesaid Edward, Viscount Chichester and others in the said surrender and concession named,

"We have given, granted, bargained, sold, released and confirmed, and by these presents we for ourselves, our heirs and successors do give, grant, bargain, sell, release and confirm unto the aforesaid Edward, Viscount Chichester, and Arthur Chichester, son and heir apparent of the said Edward, Viscount Chichester, and the heirs and assigns of the said Arthur Chichester for ever,

"All the Castle or Mansion House of Belfast, with the Church lands thereunto belonging. . . . And also all the Manor of Belfast with its appurtenances, as well as all other manors, castles, towns, townlands, hamlets, lands, parcels of land, and other tenements and hereditaments of and in the territory, circuit, extent, or precinct of the lands of Tough ne Falle, Tough Moylone, otherwise Mylone, otherwise Malone, Tough Cinament, Carnemoney, otherwise Carnmoney, Carnetall, Monkesland, and Ballybone, as well as all the chapel, messuages, and Church lands of Stranmilis, and of two water cornmills upon the River Lagan. . . .

"And also the whole and entire of the territory or tough of Ballylinney, with its appurtenances in said Co. Antrim, and also all the manors, castles, towns, townlands, hamlets, lands, parcels of lands, tenements, and hereditaments whatsoever in or within the said territory or Tough of Ballylinny. . . .

"And also all the towns, townlands, hamlets, lands, tenements, and hereditaments of Ballynefeighe, with their appurtenances, in County Down; and also all that barony, territory, and circuit of land now or lately called O'Doherty's Country, with all its rights, members, and appurtenances situate, lying and being in County Donegal, and in the liberty

of the city of Londonderry, and in the County Londonderry, or either of them ; and also all the islands whatsoever of, in or within the Lough or seashore called or known by the name of Lough Swilly, and in or within the Lough or seashore called or known by the name of Lough Foyle, or elsewhere in the high sea and bays and creeks of the same, within or near the Barony, territory or circuit of land of Innishowen and O'Doherty's Country aforesaid ; and also all castles, manors, or mansions and the Tough of Ellagh, with their appurtenances, in the said County of Donegal, and in the liberties of the City of Londonderry aforesaid, and in the aforesaid County of Londonderry, or either of them. . . .

" And also all the manor of Dungannon, with its appurtenances in County Tyrone, and the forts and castle of Dungannon, with their appurtenances ; and also all the towns, townlands, hamlets, lands, tenements and hereditaments of Dungannon, otherwise Drome . . . Killmacullen, with their appurtenances . . . etc., etc."

A remarkable feature of the Patent is that while the Surrender purported to yield up the Bann as far as the Salmon Leap at Coleraine, the Patent describes the Surrender as one confined to the weir and fishing in the Bann near Toome. The Chichesters, in fact, possessed no part of the stream, as the Derry Inquisition proves. It would have been the duty of the Exchequer Commissioners in 1621 to have noted any Chichester fishery bearing a Crown rent, and Stephen Allen and Sir Thomas Phillips would have been delighted to record and recognise it, so as to afford a foundation for the " finding " at Carrickfergus.

It will be observed that in the part of the Patent which mentions Lough Foyle, no fishery is granted. The fishery appertaining to Lough Foyle was included in the Londoners' Charter of 1613, and at the time the Patent of 1640 issued, had been reseized by the Crown. In spite of this, the Chichesters, for one half year in 1661, took a receipt from the Clerk of the Pells for the Crown rent due by them under the Patent as for " the territory of Innishowen with the fishery of the water of Lough Foyle in the Counties of Tyrone and Donegal " (1C. 11D., 256, I.R.O.). The Foyle fishery was

restored to the City of London in 1662 by Charles II., but the form of the receipt may either be due to official error or to an effort of the Chichesters to claim Lough Foyle, as they did the Bann. It was possibly with this view that the Patent was left unenrolled until 1667. For twenty-seven years no one knew its exact terms, and having the land adjoining, the public might well imagine that the successor to O'Doherty's patrimony enjoyed O'Doherty's fishery.

A Patent so obtained and granted, was, by Strafford's legislation, rendered unassailable by the Crown. Nevertheless, it is studded with a series of brass-bound *non obstante* clauses, which show that Lord Chichester was nervously on the alert to prevent future cavil. These clauses of caution, 14 in number, are a curiosity of literature, and perhaps deserve exhumation :

" Notwithstanding the mis-naming or mis-recital or not naming or not recital of any of the counties, baronies, cities, hundreds, territories, parishes, wards, franchises, liberties, manors, domains, towns, townlands, hamlets, carucates, quarters, half-quarters, and parcels of lands or places in which the aforesaid premises or any parcel thereof exist or lie.

" And notwithstanding the mis-naming or mis-recital or the not naming or not reciting of any of the castles, manors, domains, towns, townlands, hamlets, carucates, quarters, half-quarters, parcels of lands, tenements or other hereditaments whatsoever, part, parcel or member of the premises above by these presents granted or mentioned to be granted, or any parcel of the same, or known by habit or repute as part, parcel or member of them, or any part of them.

" And notwithstanding the wrong finding or wrong returning or the not finding or the not returning of Office or Inquisition or Offices or Inquisitions of the premises, or any parcel thereof, whereby our title, right, status, or interest in, to, or of all and singular the premises before mentioned or any parcel of the same ought to be found, before the making of these our Letters Patent.

" And notwithstanding the mis-naming or mis-reciting or the not naming or the not reciting of any demise or demises,

grant or grants, for a term or terms of years, for life or lives or in fee tail, or in fee farm, or in fee simple, or otherwise, of the premises before mentioned, or any parcel thereof, made to any person or persons, body politic or incorporate, being of Record or not of Record ; and notwithstanding that of the names of the tenant, farmers, and occupiers of the premises, or any parcel thereof, no full, true or certain mention be made.

" And notwithstanding the default by any or any body of the certainty, computation, portion, apportion, demise or declaration as to rent or service, or as to annual value, quantity, quality, nature, class or kind of the premises, or any parcel of them. And notwithstanding the default of not naming or misnaming any tenant, farmer, or occupier of the premises, or any parcel of them.

" And notwithstanding any default in not naming or not rightly naming the nature, kind, class, quantity or quality of the premises or any part thereof.

" And notwithstanding any Statute in Parliament made and published by our Lord Henry the Fourth, late King of England, our Predecessor in the first year of his reign at Westminster, and afterwards amongst others by the authority of Parliament in our said Kingdom of Ireland established and confirmed.

" And notwithstanding any Statute in Parliament made and published of our lord, the late King Henry the Sixth of England, our Predecessor in the eighteenth year of his reign at Westminster aforesaid, and afterwards amongst others by the authority of Parliament in our said Kingdom of Ireland likewise established and confirmed.

" And notwithstanding a certain Statute in Parliament by our Lord Henry the Eighth, late King of England, our Predecessor, in the 33rd year of his reign at Limerick in our said Kingdom of Ireland, made and published, of which the title is ' An Act for Lands Given by the King.'

" And notwithstanding any other Statute or Act made, published or established, in the same year in our said Kingdom of Ireland, or in any other year of the reign of the said King Henry VIII.

" And notwithstanding a certain Statute in our said Kingdom of Ireland made, published and established in the 38th year of the reign of our Lord King Henry VIII., and in the 2nd year of the reign of the late Queen Elizabeth of England, our Predecessor, whereby both jointly and severally the private or ' first fruits,' as well as the twentieth parts annual rent or pension, according to the value of the twentieth part of the annual rent and profits of certain church lands and premises, in said Statute mentioned, have been granted to us.

" And notwithstanding any Statute or Act made, published, or established in the said 2nd year of her reign in our said Kingdom of Ireland, or in any other year of the reign of the said Queen Elizabeth.

" And notwithstanding any Ordinance by way of Statute of Ireland made in our said Kingdom of England in the 17th year of our Predecessor, Lord Edward I., the late King of England.

" And notwithstanding any Statute made, published or established in our said Kingdom of England in the Parliament of our Lord Richard II., late King of England, in the 3rd year of his reign, or in any other year or years of the said Richard II., late King of England.

" And notwithstanding any other Act, Statute, Ordinance, prohibition, restriction or provision whatsoever, heretofore made or hereafter to be made, within our said Kingdom of England and Ireland, or any other article, agreement, convention, commission, letter of instruction, or warrant, directed or made heretofore for the premises, or any parcel thereof, or any other thing, cause or matter whatsoever in evacuation, weakening or annihilation of these our Letters Patent.

" We will also, and by these presents for ourselves, our heirs and successors, we give and grant unto the aforesaid Edward, Viscount Chichester, and to Arthur Chichester, that they may and shall have these our Letters Patent made and sealed under the Great Seal of our Kingdom of Ireland without fine great or small thereupon to us in our Hanaper Office to our use to be rendered, made or paid.

" So that express mention, etc.

" Any Statute, etc."

In spite of these ironclad provisions the Chichesters did not (as we have shown) enroll the Patent for over a quarter of a century, nor until the law compelled them to do so. Hence Arthur Chichester, in 1661 (then become Lord Donegall) was able to pretend to Charles II. that he had received no consideration for the Surrender.

A matter most keenly debated in connection with the Patent would be the amount of the rent payable thereunder. Strafford was zealous as to enlarge the King's revenues, but the revised rent gave Lord Chichester no ground of complaint. Under the two patents of 1621, the Crown rent for the Innishowen and Tyrone estates was £57 4s. 5d., and for the Antrim estate (including Lough Neagh and the Bann) £30 15s. 6d.,[1] making altogether £87 19s. 11d. In the patent of 1640 the whole of the lands comprised in the patents of 1621 are bulked together at a rent of £90 16s. 6d. The actual increase in rent was, therefore, only £2 16s. 6d. This shows what an excellent bargain Edward Chichester made.

Strafford only exacted a fine of £467 17s. 6d.; and the tenure of a few of the "parcels" was changed from "Common soccage" to "Knight's service," which was less favourable. Sir Arthur Chichester, when Deputy in 1605, protested to Cecil against so easy a tenure as "common soccage" being allowed to Hamilton (though he always inserted it in his own grants). The stipulation for the service of "eight knights" was not burdensome in respect of a perpetual estate in hundreds of thousands of acres. ("Knights' service" was, however, altogether abolished by an Act of 1662 before the Patent was enrolled.)

The territories for which the rent of £90 16s. 6d. was accepted in return for the Surrender, to-day probably yield, owing to the uprise of Belfast, half a million a year. Thus, by giving up a portion of the stolen goods, Lord Chichester acquired a Statutory Patent to vast and valuable properties

[1] In the Lough Neagh litigation an affidavit as to the 1621 Patent twice states the rent of £30 15s. 6d. to be "£920" (O'N. *v.* J., p. 42, App. 5). This gave it an appearance of fair seeming, and misled the Lord Chancellor of England, who, in 1911, adopted the figure of "£920" in his judgment. The Calendar shows "£29" for the Belfast parcel, and the Patent-Roll "nine and twenty pounds." Plaintiff's Archivist swore it to be "£920."

which had been acquired by bloodshed, corruption, and breach of public trust.

Doubtless the Patentee felt aggrieved at losing even a portion of the booty; but he could take comfort at the remembrance of a certain Captain Chichester, who, only forty years before, begged an allowance of a few groats for his kinsman, cried out upon his "bare allowance of ten shillings per diem," and groaned over "the greatness of my wants."

Lord Chichester's sons, Arthur and John, were named as being bound by the Surrender. John, who was a minor, did not sign it, and Arthur was the future Lord Donegall, who afterwards eluded its provisions. Strafford quitted Ireland on the 3rd April, 1640, and the new patent was issued five months later by his Deputy, Wandesforde. On 11th November, 1640, Strafford's impeachment began, largely based on his practices in Ireland.

While the most rapacious of the Undertakers, such as Boyle (Earl of Cork) and Clotworthy, bore witness against Strafford, the pregnant fact has already been noted that not a whisper was urged by the Chichesters to impute that there was any injustice in stripping them of the fisheries.

The English House of Commons charged it as high treason that, on the 30th September, 1633, Strafford spoke to the Corporation of Dublin these words: "Ireland was a conquered nation, and the King might do with them what he pleased. Their Charters were nothing worth, and did bind the King no further than he pleased" (S.T., v. i., 724).

The Lord Lieutenant was beheaded on 12th May, 1641. His Deputy and friend Wandesforde predeceased him. He died of grief at his Patron's misfortunes in December, 1640 (C.O., 116). Lord Chichester, after their unexpected deaths, must have reflected that, had he held out another year, he might have done still better.

Meanwhile he bided his time, and suppressed his Patent from the world. Such apparent neglect, for an estated man (in the risky times in which he lived) challenges attention. The effect of non-enrolment was to conceal the existence of the Patent during the rest of his life.

The Crown in 1641 enrolled the Surrender, but for twenty-

six years there was no legal record of the grant. Then it was enrolled only when further suppression would have made it forfeit by law. It appeared on the Patent Roll for the first time on the 16th September, 1667—twenty-seven years after it was sealed, nineteen years after the death of Edward Lord Chichester, and seven years after the Restoration. Had another month been allowed to elapse without enrolment it would have become void, because the "Act of Explanation," passed in October, 1665, required prior Patents to be enrolled within two years (Sec. 72).

The course taken by the Chichesters was the reverse of that followed by every other Patentee of the period, and its furtiveness excites enquiry as to the cause for so strange a suppression.

It is true that for five years of the period of non-enrolment legal work in Dublin was suspended owing to the struggle between the Royalists and the Cromwellians for the Capital, and the rebellion outside. Grants, however, were regularly enrolled up to 1649. There is then a break until 1655, when Cromwell's Officials took up the work; but, except during these five years, the Patent could have been enrolled at any time after it was issued. Edward Chichester died in 1648, and his son Arthur then sat in his place as Lord Donegall. He pursued the same mysterious tactics. That they were not due to forgetfulness or inadvertence is clear, for the moment an Act passed affecting enrolments, the Patent forthwith was put on record.

As the names of father and son were set to the Surrender, the fact that both refrained from enrolling the Patent until a change in the law compelled the son to do so, points to a family agreement not to make it public. What valid reason can be assigned for this secretiveness? The Patent had been rendered impregnable from attack by the Crown owing to Strafford's legislation. To ward off even the suggestion of the possibility of flaw, it bristled with *non obstante* clauses. What fear of danger then led to its being withheld from scrutiny? None could exist, and therefore the only object concealment could effect, was to hide from the public that the family no longer could pretend to lay claim to the waters

of Lough Foyle, Lough Neagh and the Bann. Strafford's execution and Wandesforde's death led them to entertain the belief that what they had lost might be regained. Lough Foyle and the Bann stood sequestrated from the Londoners. The King's affairs were in parlous plight, and amidst the uncertainties of the time, by the help of corrupt officials backed by bogus entries in Crown Rentals, the Chichesters might hope to win back " their own."

In 1661, when Lord Donegall deceived Charles II. into making a re-grant of the fisheries, the Patent was still kept secluded from scrutiny. Had it been produced, its terms would have refuted the pretences on which the gift of Lough Neagh and the Bann was then obtained.

A struggle was even made in 1662 by Lord Donegall to secure an entirely fresh Patent, so as to get rid altogether of the unenrolled grant which confessed the Surrender of the fisheries. A King's Letter was issued with that object ; but, before it could take effect, Section 72 of the " Act of Explanation " compelled enrolment. This fact sets in darker relief the shameful story of the cheating of the Crown in 1661 by Lord Donegall. Before it is told, the situation of the " sequestered " Londoners claims attention.

CHAPTER XXXII.

ENTER SIR JOHN CLOTWORTHY.

While Strafford was proceeding in Dublin against the Chichesters, Charles I., at the instigation of Sir Thomas Phillips and Bishop Bramhall, of Derry, attacked the Irish grants of the London Corporation. In 1635 the King fined the City £70,000 for neglect; and then, by *scire facias* in the Star Chamber, in 1638-9, annulled the Patent for their Ulster estates (C.V., 51). The title to the River Bann was thus put back in the Crown.

Strafford, writing on the 27th September, 1636, to Bramhall (who originally came to Ireland as his chaplain, and was promoted to be Bishop of Derry and afterwards Primate), says: "There is a treaty with the King by the City to compound their fine and to be restored to their lands and seignories in Ireland; but nothing at all is concluded. I believe not only the £1,000 due for this last fishing, but the fishing itself, will be reserved to the Crown" (R.P., 30).

The Bishop was then a Receiver over both the Bann and Foyle fisheries, sequestered from the Londoners.

On the 18th October, 1639, Charles I. pardoned the Corporation, and remitted the fine of £70,000, but this did not remove the legal effect of the order of the Court of Star Chamber which cancelled their Charter. There had been much negotiation with his Majesty, and several counter-proposals, but throughout the contest the City tenaciously clung to its demand to be restored to the Ulster fishings, which brought in large and ready moneys. In order to clinch matters the House of Commons, on the 26th August, 1641 (three months after Strafford's execution), resolved that

the sentence of the Star Chamber was " unlawful and unjust, and that the citizens should be discharged from the judgment and restored to their estate."

On 25th November, 1641, Charles I., cowed by Strafford's condemnation and death, promised the Corporation, who entertained him to dinner, that their Patent should be restored (C.V., 60).

This banquet was a famous one. Carlyle refers to it as a " thrice glorious civic entertainment." It was held to celebrate the Royal return from Scotland—three days after the Grand Remonstrance (C.C., vol. i. p. 109).

The King said : " One thing I have thought of as a particular testimony of my affection to you, which is to give back unto you freely that part of Londonderry in Ireland which heretofore was evicted from you. This I confess, as that Kingdom is now, is no great gift ; but I intend first to recover it, and then to give it to you wholly and entirely ; and for the legal part of this I command you, Mr. Recorder, to wait upon me to see it punctually performed " (S.P.D., Car. I., v. 485, No. 110).

This promise was so solemnly regarded that it was recited twenty-one years afterwards by Charles II., when renewing the City's Charter to the Ulster estates. (11th April, 1662.)

Although Charles I. was not able to make good his Royal word, the citizens later on turned the promise and the precedent of the banquet of 1641 to good account.

A month before the speech, the great Ulster Rebellion had broken out, as the result of the Plantation confiscations. The revolt soon extended all over Ireland, and large numbers of men of English descent joined the native Irish in insurrection. After lasting eleven years, it was suppressed by Cromwell (1649-52).

On 8th February, 1653-4, the City entertained Cromwell at a great dinner, evidently with a view to procuring from him a promise as to their Irish estates, similar to that which they had obtained from Charles I. The occasion is thus described by the jealous Ludlow :

" Cromwell so ordered matters at London that he procured himself, his officers, and Council to be invited by the City to

dinner, which was managed with all possible state. He and the rest of his company rode on horseback through the City. The Mayor and Aldermen met him at Temple Bar, where the Mayor, as an acknowledgment of his authority, delivered the sword to him ; and he (as kings used to do) restored it to him again. He was harangued by the Recorder ; and the Mayor, riding bare-headed, carried the sword before him, several liverymen in their gowns standing on each side of the street where he passed. Commissioner John Reynolds and Colonel Whalley led a troop of 300 officers to Grocers' Hall, being the place appointed for the entertainment, which being ended, he bestowed a badge of his usurpation by conferring a knighthood upon Alderman Thomas Viner, the Mayor of London. This was principally contrived to let the world understand how good a correspondence there was between him and the City of London " (L.'s M., 208).

We are not told the topic on which Cromwell was " harangued by the Recorder," but, doubtless, that orator reminded him of the late King's promise ; for on the 20th February, 1653-4, the City petitioned Oliver, praying that they be restored to their lands and fishings, and stated that they had spent £150,000 in Ulster. This request (being merely for what Charles I. undertook to grant) was favourably received by the Protector, and on 3rd March, 1653-4, the Petition was endorsed : " It is his Highness's pleasure to refer this Petition to the Council, to give the Petitioners all due satisfaction.— J. Sadler " (S.P.I., vol. 286). Thus it is evident that, as soon as Ireland was re-conquered, the Londoners took steps to prevent their grant remaining in abeyance, and that Cromwell sided with their claims. On the 5th April, 1654, the Privy Council ordered that an ordinance be prepared to restore the City to its rights. This was issued on the 29th August, 1654 (S.P.I., vol. 285-6), and, on the 4th September, 1655, the Commonwealth Council resolved that new Letters Patent should be granted to the Corporation.

In pursuance of the foregoing, Cromwell, on the 24th March, 1656-7, by Letters Patent, enrolled at Westminster and in Dublin, granted the Irish Society (which now represented all the City Guilds) the same rights in Ulster as they

had enjoyed under the Charter of James I. (A. *v.* I.S., 16). This included the grant of the Bann from the sea to Lough Neagh.

While these negotiations were afoot, a leading Cromwellian, Sir John Clotworthy, whose father had "planted" near Antrim on Lough Neagh, hatched a scheme to snatch the fisheries for himself and forestall the Corporation, as Sir Arthur Chichester had done half a century earlier. The Plantation methods of the City were merciful to the Irish when contrasted with the ruthlessness of individual planters. Hence the Londoners were loathed by every Ulster Undertaker, who made the natives his prey, from Chichester to Phillips and from Phillips to Clotworthy. While pretending to favour their adventure, the Anglo-Irish officials in Dublin and their local cronies in Ulster were really its active enemies. For this there was one all-sufficing reason—they wanted the plunder for themselves. Dublin Castle, in the Stuart reigns, was manned by would-be aristocrats; and they had no special love for the tradesmen of the London Guilds, who financed the Ulster enterprise.

The gentleman-adventurer, who infested Ireland looking for prey, recked little whether he robbed a chieftain or a monastery. If such spoil fell short he had no close care for the property of distant Cockaigne. He probably thought the King's service degraded by sordid syndicalism, when it was undertaken by trading companies such as the London Guilds.

No doubt he would rather do religion a service, as well as himself, by raiding an Abbey; but interlopers like the London tradesmen who interfered with individual enterprise were good marks when monks grew scarce. What cared he then for the profit of the huxters who took shares in the Ulster speculation? For him they were merely a base crew of ironmongers, mercers, cooks, innholders, masons, tallow-chandlers, grocers, drapers, embroiderers, fishmongers, plasterers, glaziers, basket-makers, paper-stainers, skinners, cordwainers, bakers, girdlers, wax-chandlers, turners, haberdashers, tailors, salters, founders, cutlers, sadlers, joiners, woolmen, scourers, brewers, coopers, pewterers, weavers,

plumbers, poulterers, barbers, tilers, fruiterers, curriers, carpenters, butchers, and vintners.

So while they were in treaty with Cromwell for the restoration of the Patent, Sir John Clotworthy was counter-working them. The skilfulness of his wiles was such, that in the teeth of the plain words of the Protector's Patent, he actually succeeded in ousting them from the Bann. Then when the Commonwealth ended he managed to secure a Royal grant to ratify the trick by which he cheated the City. The history of Sir John's audacity savours of the marvellous.

"The famous Sir John Clotworthy," as he is styled by Carte, was the son of Hugh Clotworthy, who, with his brother Lewis, came from Somersetshire with Lord Essex in 1573.

Lewis became agent in Cork for John Wood, of London, victualler to Queen Elizabeth's forces in Munster (H. MS. C., 1910, 291). Writing in October, 1602, he protests: "He is no freeman of the City of Cork, whereby he is subject to be called in question amongst the townsmen for the selling of wares" (S.P.I.A., 401 and 501).

Hugh Clotworthy prospered better than his victualling brother. He went northwards with Chichester, being accompanied by Capt. Ellis (H.C., 398). A glance at his adventures is essential to the understanding of his son's impositions on Cromwell and Charles II. In September, 1601, Lord Mountjoy was sent a note of the boats kept at Lough Neagh for her Majesty's charge, viz. "One barque, closed decked, 30 tons. One boat of 14 tons. And three smaller boats." These were placed under Hugh Clotworthy's command:

"The charge is . . . for the master, shipwrights, and men, £721 5s. 1¼d. beside the charge for cable, sails, tackle, etc., necessary to making the boats fit to assist in crushing Tyrone. Captain Hugh Clotworthy, who is well recommended by Sir Arthur Chichester for his diligent services on the lake, was dealt with to undertake the maintenance of the barque and boats, but could not be brought to a lower figure than £1,000 per annum, of which he asks that half be paid in England in sterling money. Although on consideration I found this to be a good offer to her Majesty, yet I

brought him down to the £721 5s. 1¼d. mentioned above, as well for his own pay as for that of the men aforesaid and the tackle. He is also to receive £400 by exchange in England to make his provisions there (because Ireland does not yield them) and the balance paid here. This balance is to be paid in the new standard and is not to be exchanged."

Mountjoy's approval of Clotworthy was sent from Cork, 12th October, 1601 (S.P.I.A., 396 and 635).

Chichester used Lough Neagh as a naval base, and on 14th March, 1602-3, wrote Cecil from Carrickfergus :

" I have lately finished a vessel of 25 tons, which I hope to use for planting garrisons on the other side of the Lough. . . . There is sometimes good store of salmon and other fish in the Lough. It will be a good relief to the soldiers if we had nets to take them. Pray order Mr. Jooles or Mr. Cockayne [Army contractors] to supply one " (S.P.I.A., 336). The Ulster war ended in 1603, and Hugh Clotworthy got his reward soon after Chichester became Deputy. In 1605 he received a grant of the lands of Massereene, taken partly from the Church and partly from the O'Neills of Kilulta.

Chichester, on the 10th June, 1606, conveyed to Sir Hugh Clotworthy part of the territory of Moylinny in Lower Clandeboy, at £10 a year (I.I., 1829, No. 7). Hugh married in 1606, and the Carte papers relate that, on the 30th June, 1606, "Captain Hugh Clotworthy of Massereene was exempted from the King's free pardon, on account of wilful murder " (C. MS., v. 61, fol. 321). This was a difficulty not hard to surmount while Sir Arthur Chichester was Deputy ; so, on the 2nd October, 1607, an allowance was made to Captain Hugh " for keeping serviceable the barque and boats upon Lough Eaghe and Lough Sidney, by agreement entered in the Council-book, per annum £40." He is mentioned in Hugh O'Neill's Remonstrance, sent from exile to James I., as having possession of a wrongful distress levied on the Earl's tenants, " still with Captain Clotworthy, and not restored " (Mn. 128).

He must have been an affectionate father, for on the 5th July, 1616, he secured for his sons John and James a monopoly of the licensing of taverns in Down, Antrim, and Louth,

with the exception of certain towns (M. MS., 156). The youths had then attained the years of nine and eight respectively. In 1616 Hugh Clotworthy was appointed Collector of fines in Co. Antrim (S.P.I., 127).

On 22nd October, 1617, a *concordatum* was paid to him (S.P.I., 195). In 1619 he became Mayor of Carrickfergus, as Chichester's nominee, while a "doquet" of the 31st October, 1621, confirms to Captain Hugh and his heirs the lands of Grange, Co. Antrim (S.P.I., 339), transferred to him by Sir Thomas Hibbotts, the Irish Chancellor of the Exchequer.

His deserts were further recognised by a Knighthood, and a pension in 1618. This was a pension of 6s. 8d. a day in favour of himself and his son John, who was not twelve years old at the time.

Upon the narrow pivot of this pension, much of the subsequent history of the grants of Lough Neagh and the Bann turns.

No joint pension could then have been applied for without disregarding the King's command. An order made by James I., just after Chichester's dismissal, forbade pensions for two lives. The Royal Order to the Lords Justices on 19th December, 1615, was: "Upon the termination of the late war, it was requested that many men who had done good service, and others for other respects of State, should have pensions bestowed upon them during their lives, which his Majesty had no purpose should be continued after their deaths, as he finds they are, to his excessive charge. His pleasure therefore is, for redress of that inconvenience hereafter, that as any pensioner of what quality soever shall die, his pension shall die with him, and not be bestowed upon any other" (S.P.I., 104). The grant to Sir Hugh Clotworthy of a double pension, was nevertheless sanctioned in evasion of this order. It is another evidence of Chichester's influence with Deputy St. John in 1618.

Moreover, the pension to Captain Hugh, who held a post at £40 a year, was one of 6s. 8d. a day, equal to £121 13s. 4d. per annum, endowed for two lives. Such bounty in Stuart times, given in ignorance by King James, naturally was of

uncertain duration. So, when those who "knew not Joseph" came to audit accounts, the pension was stopped. No Patent of that nature was regarded as irrevocable, and, in the stately language of the times, Sir Hugh "surrendered" it (S.P.I., vol. 237).

As years wore on, although he had received other valuable grants for his services, Sir Hugh lodged endless protests against the loss of his 6s. 8d. per diem. On one of these the Irish Commissioners in Sergeants' Inn reported (14th December, 1626):

"We have seen his petition and the Lord Deputy's commendatory letter. In October, 1623, we examined the case, and found that the petitioner was entrusted with maintenance of certain boats on Lough Eagh at the beginning of James I.'s reign, and that he got 15s. English a day in the seventh year of that reign for doing so. In 1618 he got, instead, a payment of 6s. 8d. a day, on condition of keeping the boats in Lough Eagh serviceable. He was left out of the last establishment, and we recommend that something be done to compensate him. We cannot suggest anything further."

Possibly he had not "kept serviceable" the King's boats on Lough Neagh, and therefore was properly deprived of the pension. Indeed a letter of Sir Hugh, dated the 4th March, 1627, says: "I have been long sickly and very crazy and, since last Assizes, have not been a mile from my house" (H. MS. C., 1909).

At any rate the grant was improvident, and there was a condition attaching to it, of the fulfilment of which the Executive were the judges, and they had put an end to it. Nevertheless, a King's Letter of the 17th July, 1628, to Lord Deputy Falkland, shows that Sir Hugh got £700 compensation for the extinction of the pension:

"Ordered that account be taken of what Sir Francis Edgeworth owes to the King, and that as much of it as is of the value of £700 be assigned to Sir Hugh Clotworthy. Sir John, his son, is to have the first company of horse or foot which falls vacant. This is in consideration of a surrender on their part of a pension of 6s. 8d. a day granted them by King James" (S.P.I., vol. 247).

To extract further compensation for the loss of this pension afterwards became the main object in life of Sir John. He effected it by an imposition on the State, which could only have succeeded by the suppression of facts. Sir Hugh Clotworthy died on the 28th February, 1630-31, and his son John was then of full age and married (I.I., 1829, No. 12).

Before Sir Hugh's death in 1631 Sir John advanced no claim to the extinct pension, but asked for a " company of horse or foot." Hence Charles I. wrote to the Lord Deputy (2nd June, 1629) :

" Ordering that as Sir John Clotworthy had been disappointed in his hopes of a company, he shall positively have the first which falls vacant " (S.P.I., vol. 248).

The pension was then gone for ever, and its surrender had been compensated for. There remained the expectation of " a company," but this was a mere make-weight of Royal favour. Sir John kept pressing for his " company," and finally pretended that the pension had been given up by his father without any other compensation than the hope of such a command. For, on the 24th May, 1630, the Committee of the Privy Council on Irish Affairs, at Whitehall, reported that " Sir John was absolutely promised the next company, but was twice defrauded, owing to Sir Thomas Dutton, Kt., and Sir John Netterfield, Kt., being appointed over his head. As Sir John Clotworthy's father had given up a pension to get the company for his son, the Committee resolve to take note of the matter, and to secure absolutely to Sir John the company which shall next fall vacant after Lord Caulfield, Master of the Ordnance, has been provided for " (S.P.I., vol. 250).

This display of looseness as to facts was usual when Irish business was handled at Whitehall. The same Committee repeated their formula, with variations, on the 17th November, 1630 :

" Sir John had letters for the reversion of the next vacant company in Ireland on condition of giving up his pension of 6s. 8d. a day. Subsequently, when all letters of reversion were recalled, he got fresh assurances that he should be satisfied next after Lord Caulfield ; but recently the Earl of

Westmeath has got a letter which will prevent Sir John from getting satisfaction. This letter was got without knowledge of the Council, and given by the King in ignorance.

" Ordered : To ask the King if he wishes Sir John Clotworthy should receive the benefit of his former promise ; and, if so, to move his Majesty for the necessary letters to the Lords Justices in Ireland."

Not a word in all this about the £700 given to his father for the surrender of the pension.

About 1633 a Petition of Sir John tells a tale somewhat different from the others, but drops no hint as to the compensation received in 1628 :

" Petitioner's father was, in reward for 40 years' service in the wars of Queen Elizabeth, granted a pension of £0 13s. 4d. a day in 1609, and other entertainments for keeping a barque and other boats on Lough Sidney for help of merchants and offence of rebels. Afterwards, in lieu of these payments, he and his father got, in 1620 (*sic*) a pension of 6s. 8d. a day for the longer liver of them. This he took on condition he was given the command of the first vacant company of horse or foot in Ireland. On July 17th, 1628, the King's Letters directed that this should be done.

" Sir James Blunt's company then fell vacant, but it was given to Sir Thomas Dutton. In consequence of King's Letters of June 2nd, 1629, he shortly after got Sir Richard Aldworth's company ; but before he could enjoy it the new establishment came over, and in consequence of it he was displaced by Sir John Netterfield. Since then the disposition of the army has been entirely handed over to the Lord Deputy, and petitioner cannot get his company.

" He prays for the benefit of his Patent " (S.P.Ad., 180).

The next intelligence of Sir John is given us by Carte. Dealing with the " Remonstrance " of the Irish House of Commons against Strafford in 1640, that historian says :

" It was sent ready-drawn from the faction of England with which the parties in Ireland held a conference, chiefly carried on by Sir John Clotworthy, who, for that merit, and in order to assist in the management of the charge against the Lord Lieutenant, had been chosen Member of Parliament

for Malden, in Essex " (C.O., 108). His election took place in 1640. He was one of Pym's creatures in the arraignment of Strafford. Clarendon describes him as a " gentleman of Ireland and practically unknown in England ; who was, by the contrivance and recommendation of some powerful persons, returned to serve for a borough in Devon, that so he might be able to act this part against the Lord Lieutenant " (C.R., 3, p. 5).

He " purveyed alarmist reports as to the doings of agents of the King in the Irish army " ; and was made one of the " mysterious Committee," with Pym and Hampden, to enquire as to the state of the Army.

The Camden Papers show that he sat with Cromwell on the " Sub-Committee of Religion " on the 23rd November, 1640 (p. 80). He got his Company of Foot in 1641 (O.P., vol. i. p. 126 and vol. ii. pp. 109, 114, 218 and 245. H.C., p. 479). Yet Sir John became one of the stoutest of the anti-Royalists. In the impeachment which led to Strafford's execution he was a principal witness. The Rawdon Papers describe him as " one of Strafford's greatest enemies " (p. 62).

Strafford had treated him and his family with indignity, and wrote to Archbishop Laud in January, 1638 : " I have given direction that the Lady Clotworthy shall be convened before the Court of High Commission " (S.L.).

Sir John, having fed fat his great revenge, next took part in the prosecution of Archbishop Laud, and before his execution, pestered him on the scaffold " with impertinent questions " (S.T., 949). On 28th September, 1643, he was nominated member of a Committee of the House of Commons for receiving money to aid the Scots (C.S.P., Dom. 1). He was present at the trial of Lord Maguire in London, who was executed there in 1644-5, and said to him after sentence : " My Lord, I have been your schoolfellow heretofore " (S.T., 959). That Chieftain, in the Irish House of Lords, in 1640, had joined in the attacks on Strafford.

Clotworthy was near neighbour to Lord Chichester, and sat with his son, Sir Arthur, as Member for Antrim in the Irish Parliament of 1634 (S.P.I., 63), but they took opposite sides in the Cromwellian struggle.

He moved the adoption of the Presbyterian religion by the State and for the Army soon after his election in 1634 (H.C., 483). He also presented a Petition for the abolishing of Episcopacy (R.P., 82).

Both Sir John and his brother James, as partisans against Charles I., received commands on the Parliamentary side. He was one of the Joint Committee of both Houses for Irish Affairs in London, and, on the 30th October, 1645, was present when an Order in favour of his brother was made by this Committee: "Colonel James Clotworthy to have Lord Cromwell's troop of horse of the old army" (S.P.I., 417). This was Lord Cromwell of County Down.

In 1646 he was one of the Commissioners of Parliament into Ulster (C.J., vol. v. p. 68). In that year he was also one of those appointed to receive the surrender of Dublin and the sword of State from the Duke of Ormonde (H.C., 484). He was the reputed author of the famous saying that religion must be propagated in Ireland "with the Bible in one hand and the sword in the other" (I. 18 C., p. 40). In 1648 Sir John received from Parliament £125 for services for $2\frac{1}{2}$ months to the 12th February, 1646-7. Afterwards he was charged with embezzlement in relation to the supplies for Ireland, and was obliged to fly to France in 1648, and was excluded from the House of Commons (C.C., vol. i.). Whitelock's *Memorials* show that in the same year he was restored and again expelled, but was arrested by Cromwell, as he began to favour a settlement with the King (H.C., 484). The charges of embezzlement against him were renewed in 1651, but no definite accusation was established, and he was discharged from jail (N. II., 536).

It is unlikely that he can have been "imprisoned for nearly three years," as some accounts state (H.C., 484), for in 1653 he was granted a licence to export Irishmen into foreign parts (S.P.D., 250). His zeal evidently restored him to favour with the Protector; and in 1654 he was one of Cromwell's Commissioners for determining differences as to the Adventurers' land in Ireland (C.S. 240).

Indeed, the Rev. Mr. Blair certifies that "Cromwell had a great respect for him, not only on account of his parts and

noble qualities, but also for particular obligations. For, before Cromwell came to the preferment to be a captain of horse—being a man of parts and great profession of religion and a gentleman by birth—Sir John had been instrumental in his advancement and command of the army, not presaging that thereafter he would come to that height as to detain him his prisoner for adhering to the cause which they at first undertook " (H.P.C., 220-1).

His nephew, Percival, writes to Sir Paul Davis, 8th August, 1654 : " Sir John Clotworthy is taken up with the Adventurers' affairs. Though when I go to him I find him very civil, and promising mountains " (E.P., 555). He was a comrade of Sir Arthur Forbes during the Ulster wars (S.P.I., 458), and an enemy of Lord Antrim's. Forbes was son to the Scottish baronet who gave Charles I. the information in 1628 which led to the ousting of the Chichesters from Lough Neagh and the Bann.

Sir John never ceased to wail after " his pension," and having become reconciled to the Protector, made bold to petition both for pension and pay. Oliver's advisers, however, showed no great sympathy towards his appeals, for on the 25th April, 1656, the Privy Council advised, on a report by Lord Broghill and Col. Arthur Hill that " in the present state of the Commonwealth, arrears of pension from the late King be not admitted ; but arrears of personal pay be considered, when debts of that nature came to be paid " (S.P.D., 297).

This seemed to be a final and definite rejection of his stale claim. Moreover the decision thus given against him was that of the great Council of the Commonwealth made on the recommendation of two of his old comrades-in-arms. Yet, so serviceable had Clotworthy become, that Cromwell ignored their advice, and within three weeks after he received it, harked back to some document of the 10th August, 1655, which he must have known of, when Lord Broghill and Col. Hill were called in to investigate the facts.

Oliver's will was law. So on the 13th May, 1656, the Protector sent this mandate to his Council in Ireland :

" Oliver, P.

" Whereas Sir John Clotworthy, Knight, hath set forth

to us by his petition, amongst other things, that there is a growing pension of 6s. 8d. per diem due unto him for life, which, by a Report of the 10th August last upon our reference of the 23rd April, 1655, appears to be so, and is submitted unto us :

" Now, forasmuch as the said Sir John Clotworthy and his father, Sir Hugh Clotworthy, have long served against the rebels in these parts, to the end some mark of the value of their services may continue upon them where their service was performed, and for extinguishing the growing pension during life, our will and pleasure is, and we do hereby direct and appoint, that a lease of 99 years be made unto the said Sir John Clotworthy and his assigns of the Lough called Lough Neagh, as it was surrendered to the late King on the 1st July, 1640, by the then and now Lord Chichester, there being such an acknowledgment of the rent reserved on the same as unto you may seem meet ; and our Deputy and Council in Ireland are to take care that this our pleasure be put into execution, that the said Sir John Clotworthy be immediately possessed of the said Lough, according to the aforesaid surrender.

" Given at Whitehall, 13th May, 1656 " (I.R.O.).

Bearing this parchment Clotworthy and his family took passage from Chester to Dublin, in the Admiralty vessel *Nightingale*, about the 2nd June, 1656 (S.P.D., 556).

What the Protector called " our Deputy and Council in Ireland " then consisted of his son, Henry Cromwell, Commander-in-Chief of the Irish Army, with Pepys for Chief Justice, Corbett for Chief Baron, plus Col. Thomlinson and Robert Goodwin—a mort of nobodies. Henry Cromwell was only twenty-five when he arrived in Dublin, less than a year before (9th July, 1655). There was no " Deputy " at the time, as Fleetwood had retired. The Attorney-General for Ireland was Wm. Basil, of Lincoln's Inn, who was appointed by the anti-Royalist Parliament at Westminster on the 28th January, 1646-7 (H.C.J., vol. v. 68). All were well known to Clotworthy, and the lease which they were ordered to issue to him was undoubtedly submitted to, and perhaps was drafted by, Basil. Nevertheless, the Attorney-General

failed deplorably in his duty, for without any authorisation from his superiors he made the Lease to include a still more valuable grant than Lough Neagh—that of the River Bann itself. It was notorious then, that the restoration of the River to the City had been agreed on. Thus a double fraud was perpetrated, for the Government was deceived both as to the extent of the lease and as to the loss of the pension which formed the ground for giving the lease.

The documents to be cited in proof of this are of high importance, because Clotworthy's successful trick was based on the precedent set by Arthur Lord Chichester in 1620-1 ; and in turn was made the model by which, in 1661, the Earl of Donegall cheated Charles II. into making a re-grant of the Bann and Lough Neagh to himself. There were, in fact, three stages of imposition. In 1620 the King's Letter, which authorised a "confirmation" of Chichester's temporary licence in the "fishings of the loughs, waters and rivers of Lough Neagh," was transmuted, after the Carrickfergus Inquisition of 1621, into a Patent of the bed and soil of the Bann and of Lough Neagh, with their fishings, in fee simple. In 1656, Clotworthy, by means of a lie about his pension, got Cromwell's warrant for a lease of Lough Neagh ; and inserted in the Lease a demise of the Bann, without justification or authority. Then in 1661, Lord Donegall—nephew of the "great Deputy"—by a falsehood as to his pension, more audacious even than Clotworthy's, secured the reversion of the fraudulent lease. Crime dogged every step of each of the Patentees in their disloyal enterprise.

CHAPTER XXXIII.

THE SCRIVENERY OF HENRY CROMWELL.

The processes by which Clotworthy's lawless lease took form can still be easily reconstructed. Cromwell's Signet Letter of the 13th May, 1656, when taken to Dublin by Clotworthy, was lodged with the Law Officers by the end of June, 1656. The formalities for a Crown lease had to be complied with and perfected there, and the burning question of the rent settled, between Sir John and the Executive. On the 4th August, 1656, a warrant for a "Fiant" for a lease was signed by the Cromwellian Council in Dublin.

Under the Commonwealth the same procedure prevailed in respect of Signet Letters, Fiants, and Patents, as had existed under Royal rule. Instead of a "King's Letter" the Protector issued a "Signet Letter" (as the equivalent was styled in England). This, as heretofore, was followed by the "Fiant" of the Privy Council, directing the form the grant should take; and lastly there came the Patent under the Great Seal. Republican lawyers and conveyancers rigidly adhered to the olden kingly forms. The procedure is outlined in the Report of the Irish Public Records, 1890, p. 29:

"The term 'Fiant' is derived from the first word of the usual form: *Fiant literae patentes*, 'Let Letters Patent be made.' Fiants are the warrants to the Chancery, authorising the issue of Letters Patent under the Great Seal, and may be regarded as the Irish equivalent of the English 'Signet-Bills' and other warrants connected with the Privy Seals. As in the case of the 'Signet Bills,' Letters Patent under the Irish Statute of Henry VI. issue as of the date on which the Fiant was delivered into Chancery."

The lease to Clotworthy was thus preceded by a "Fiant," and this document can still be seen in the Irish Record Office. Appended thereto, on the same parchment, is a certificate, signed by the Attorney-General, authorising the lease. Basil seems to have taken office as Commonwealth Attorney-General for Ireland on 18th July, 1649, the Lords apparently not having in 1647 concurred in his appointment (H.C.J., 101). He afterwards became Chief Justice for Ireland, on the death of Pepys (L.N., pt. 2), and appears to have arrived in that country as early as 1643. His Fiant and certificate, of course, first took shape in draft before engrossment; and his certificate, although transcribed beneath the Fiant, must be treated as the document which induced the Council to issue the lease. Basil's certificate falsely states that the Fiant is "done according to the tenor of his Highness's Letters of the 13th May, 1656." This was untrue, and the lie was deliberate and serious. The Fiant authorised a lease granting the River Bann, whereas Cromwell's Signet Letter confined the grant to Lough Neagh.

Basil's responsibility is, therefore, a chief one; but, as Pepys and Corbett were Judges, it can hardly be supposed that they passed the Fiant without comparing it with the Signet Letter, or were ignorant of the cheat. Nor is it possible that they can have been unaware of the fact (then public property) that the Privy Council of the Commonwealth, in September, 1655, had resolved that new Letters Patent should be granted to the City, and that these included the River Bann.

The question of the Ulster fisheries, and their value as part of such Patent, was as well known to every official in 1656 as the trial and death of Charles I. A case so notorious as the sequestration of London's Charter by the late King—the huge fine imposed on the City, and its triumphant remission, as well as the controversies leading to Strafford's execution, fastened attention on the grant. That any of the three lawyers around the Council-board of the Protector in Dublin can be held guiltless of the trick perpetrated against both Cromwell himself and the Corporation of London is, therefore, impossible. Furthermore, the parchment bears

the " Intratur " (Let it be entered) of Thomas Herbert, Clerk of the Council, whose connivance was essential. That such men would have obliged Clotworthy for love seems unlikely.

Doubtless no comparison of Fiant and Signet Letter could be expected to be made by your Thomlinson or your Goodwin, or even your Henry Cromwell. They were not prime movers in legal affairs, though Henry Cromwell studied in Gray's Inn.

But as to the rest, no suggestion of inadvertence or mistake is possible. The text of the Fiant and certificate shows that the Bann was leased as the principal ingredient in the demise. It was let at a much larger rent than Lough Neagh, and is mentioned specifically several times. The river is treated as a wholly separate " parcel," and as the most valuable one. The Bann rent was seven times greater than that for Lough Neagh. The figures in both cases had to be discussed and settled by the Council before the Fiant was drawn up, as the Signet Letter fixed no amount. Clotworthy must have been heard as to the exact rents to be inserted for River and Lough respectively, when this deliberation took place, and the different character and values of the ingredients of the Lease were by that means brought home to every lawyer or official at the Council-Table. Thus there is cumulative proof making it impossible to doubt that the inclusion of the Bann in the Lease, which Cromwell wished to be confined to Lough Neagh, was a deliberate misdeed. If there could be room for a shadow of uncertainty as to this, the correspondence which followed, four months later, sweeps it away.

The Fiant and the Attorney-General's certificate are engrossed on the same skin of parchment. They appear thereon in the following order :

" Let Indentures be made between his Highness and Sir John Clotworthy, Knt., according to the tenour of the words following :

" This Indenture, made the day of August, in the year of Our Lord 1656, between his Highness Oliver, by the grace of God Lord Protector of the Commonwealth of England Scotland and Ireland and the dominions thereunto belonging, of the one part, and Sir John Clotworthy, of Antrim, in the county of Antrim, Knight, of the other party ; (*sic*)

" Witnesseth that his said Highness, in consideration that the said Sir John Clotworthy hath released unto his said Highness and his successors a growing pension of 6s. 8d. per diem, due unto the said Sir John Clotworthy for life, which was by the late King James his Letters Patents dated 2nd July, 1618, granted unto Sir Hugh Clotworthy, Knight, and the said Sir John Clotworthy, by the name of ' John Clotworthy his son ' for their lives and the life of the longer liver of them, payable at the feast of Michaelmas and Easter ; which said pension, by the death of the said Sir Hugh, accrued unto the said Sir John Clotworthy by survivorship ; as also in consideration that the said Sir John Clotworthy and his said father, Sir Hugh Clotworthy, have long served against the rebels in his Highness's said dominion of Ireland ; and to the end some mark of the value of their services may continue upon them where their services were performed ;

" His said Highness, of his especial grace, certain knowledge and mere motion, by and with the advice and consent of his said Highness's right trusty and well-beloved Councillor, Henry Cromwell, Esq., Commander-in-Chief of all forces in Ireland ; Richard Pepys, Chief Justice of his Highness's Court of Upper Bench ; Miles Corbett, Esq., Chief Baron of his Highness's Court of Exchequer ; Robert Goodwin, Esq., and Matthew Thomlinson, of his Highness said Council ; and according to the tenor and effect of his said Highness' Letters under his Highness' hand and signed with his Privy Signet, bearing date at Whitehall 13th May, 1656, to his Highness' Deputy and Council directed, and enrolled in the Rolls of his Highness' Chancery in this his Highness' dominion of Ireland ;

" Hath demised, granted, set, and to farm let ; and by these presents doth demise, grant, set and to farm let, unto the said Sir John Clotworthy, Knight, and to his assignees,

" All the Lough called Lough Neagh and Tome, together with the fishings and soil thereof, and islands in the said lough, called Rams Island and the other Coney Island, containing three acres of ground.

" And also the lough and river of Bann, as far as the Salmon-Leap, containing six salmon fishings, and two mixed

fishings of salmon and eels, and one of eels, and another of trouts, which said Lough borders upon the county of Down, Antrim, and Londonderry, Tyrone and Armagh, in the Province of Ulster, within his Highness' dominion of Ireland ;

" To have and to hold the said Lough, and all and singular the premises, with their appurtenances, unto the said Sir John Clotworthy and to his assigns from the 13th May, 1656, for and during the term of 99 years thence next ensuing fully to be complete and ended ; in as large, ample manner and form as the same was surrendered to the late King on the 1st July, 1640, by the then and now Lord Chichester ;

" Yielding and paying yearly unto his said Highness and his successors for the aforesaid Lough Tome and soil, with the fishings thereof, for the first seven years the sum of £5 ster. ;

" And yielding and paying for the said River of Bann and fishings the sum of £35 ster., for the said term of seven years ;

" And also yielding and paying yearly for the remainder of the said term for the said Lough Tome and soil, with the fishings thereof, £6 ster. ; and also yielding and paying yearly for the said River of Bann and fishings thereof aforesaid, for the said remainder of time after the said first seven years, the sum of £44 ster.

" The said several rents to be paid unto his Highness, at the receipt of his Highness' Exchequer in his said dominion of Ireland, at the feast of St. Michael the Archangel and Easter, by equal and even portions, over and above all public tax and other charges whatsoever ;

" And if it shall fortune the said several yearly rents, or any of them, or any part thereof, to be behind and unpaid by the space of six weeks next after any the said Feasts in, at, or by which the same ought to be paid, that then the said Sir John Clotworthy and his assigns shall, for every such default of payment during the said term of 99 years, forfeit and pay unto his said Highness and his successors the double value of the rent out of every such of the said parcels before demised as shall be in arrear and unpaid as aforesaid *nomine penae.*

" And the said Sir John Clotworthy doth, by these

presents, for himself, his heirs, executors, administrators and assigns, covenant, promise and grant, to and with his said Highness and his successors, that he, his executors, administrators or assigns shall and will pay or cause to be paid unto his said Highness and his successors, as well the said respective rents as they shall become or grow due, as also all such sums of money which shall be forfeited for any default, as aforesaid, during the said term of 99 years ;

" And further, his said Highness doth, by these presents, for his Highness and his successors, give and grant unto the said Sir John Clotworthy and his assigns that this present demise, and every article and clause therein contained, shall be good, valid and effectual in the law to all intents and purposes, against his Highness and his successors,

" Notwithstanding any mis-recital or not-recital in these presents made or not made of any Letter, instruction or direction from his Highness for passing the premises, of any lease or leases, grant or grants, demise or demises heretofore at any time made of the premises or any of them, either for term of years, term of life, or otherwise, to any person or persons being of record or not of record ;

" And notwithstanding the not-naming or mis-naming of any former tenant or occupier of the premises, or any part or parcel thereof ; and notwithstanding the not finding or not returning of any office or offices, inquisition or inquisitions of the premises or any part or parcel thereof ;

" And notwithstanding the Statute made in the Parliament holden at Westminster in the 18th year of the reign of King Henry VI., and afterwards, amongst other things, by authority of Parliament holden in this dominion established and confirmed, that no Letters Patent should be made to any person or persons of any lands or tenements before Inquisition of the King's title thereunto be found or returned into the Chancery or Exchequer ; if the King's title therein be not found, and of record nor returned within a month after, unless it be to him or them that do bring their traverse ; and if any Letters Patent be made to the contrary, that the same shall be void and of non effect, as in the said Statute more at large is contained ;

" And notwithstanding any other Statute, Act, ordinance, provision, proclamation or restraint heretofore had, made, ordained, or provided, or any other matter, cause or thing whatsoever to the contrary thereof in any wise notwithstanding.

" In witness whereof, etc."

(I.D., 8, 4, I.R.O.).

Then follows, on the same scroll, the certificate signed by Attorney-General Basil, viz. :

" May it please your Lordships,—This Fiant containeth a grant of a lease of all the Lough called Lough Neagh and Tome, together with the fishings and soil thereof, and islands in the said Lough called Ram's Island and the other Coney Island, containing three acres of ground ;

" And also the lough and river of Bann, as far as the Salmon-Leap, containing six salmon fishings and two mixed fishings, and two mixed fishings of salmon and eels, and one of eels, and another of trouts, which said lough borders upon the counties Down, Antrim, Londonderry, Tyrone and Armagh, in the Province of Ulster, within his Highness' dominion of Ireland ;

" To have and to hold the said lough, and all and singular other the premises, with their appurtenances, unto Sir John Clotworthy, Knight, and to his assigns, from the 13th May, 1656, for and during the term of 99 years from the next ensuing fully to be completed and ended, in as large and ample a manner and form as the same was surrendered to the late King on the 1st July, 1640, by the then and now Lord Chichester ;

" Yielding and paying unto his Highness and his successors, for the aforesaid Lough Tome and soil, with the fishings thereof, for the first seven years the sum of £5 ster., and yielding and paying for the said River of Bann and fishings the sum of £35 ster. for the said term of seven years ;

" And also yielding and paying yearly for the remainder of the said term, for the said Lough Tome and soil, with the fishings thereof, £6 ster. ; and also yielding and paying yearly for the said River of Bann and fishings thereof aforesaid, for

the said remainder of time after the first seven years, the sum of £44 ster. ;

" The said several rents to be paid unto his Highness at the receipt of his Highness' Exchequer in his said dominion of Ireland, at the feasts of St. Michael the Archangel and Easter, by equal portions, over and above all public taxes and other charges whatsoever ;

" And if the said several yearly rents, or any part thereof, shall happen to be behind and unpaid by the space of six weeks next after any of the said Feasts, that then the said Sir John Clotworthy and his assigns shall, for every such default of payment during the said term of 99 years, forfeit and pay unto his Highness and his successors the double value of the rents out of every of the said parcels as shall be in arrear and unpaid, as aforesaid, *nomine penae*,

" With a covenant that the said Sir John Clotworthy, his heirs, executors, administrators and assigns, shall, as well pay unto his Highness and his successors the said respective rents as they shall grow due, as also such sums of money which shall be forfeited for any default, as aforesaid, during the said term of 99 years.

" Wherein also are contained all such words of course, and *non obstantes* as in grants of like nature are usual.

" And is done according to the tenor of his Highness' Letters of the 13th May, 1656, unto your Lordships directed.

" As also in pursuance of your Lordships' warrant of the 4th August, 1656, remaining with me.

" William Basil."

Beneath the signature of the Attorney-General are those of

H. Cromwell.
R. Pepys.
Miles Corbett.
Rob. Goodwin.
Math. Thomlinson.

Then are inscribed the words :

" Enrolled and examined.

" Intratur

" Tho. Herbert, Cl. of the Council."

Upon this Fiant and certificate a lease was issued to Clotworthy on the same day as that of which they bear date (14th August, 1656) under the Great Seal of Ireland.

This lease follows the exact words of the Fiant, and was duly enrolled by Sir John on the Patent Rolls, where it now remains for all beholders to admire. Thus was accomplished one of the most impudent swindles of the Cromwellian regime.

An excuse for such conduct may be suggested by imputing looseness of procedure to the Commonwealth Government or ignorance to its officials. The truth is that the Revolutionary Executive acted with the greatest deliberation and knowledge. They showed, when it was their interest, the closest precision in Irish topography. On Sir Wm. Petty's famous survey being resolved on, the order for it was signed by Fleetwood, Corbett, Goodwin, and Thomlinson, on 11th December, 1654, " after a solemn seeking of God performed by Col. Thomlinson for a blessing on the conclusion of so great a business . . . very many of the chief officers of the Army being present in the Council Chamber " (D.S., 22-9). The most exact minutiae were observed, and up to 1659 the decrees for the Plantation are signed by Herbert, as Clerk of the Council. So keen was the scent of the Cromwellian undertakers, one on the other, that Sir Wm. Petty (Henry Cromwell's secretary) was impeached at Westminster for bribery in connection with his survey on 24th March, 1658 (D.S., 290), but nowhere was the Clotworthy trick alluded to.

Another Deed executed at the same time gives proof of Sir John's precision. This was a " Release " to Cromwell, acknowledged before the Master of the Rolls (Sir John Temple) of the long-extinct pension of 6s. 8d. per diem surrendered thirty years before, and long since compensated for. It, too, was duly enrolled in Chancery, and is addressed, in the cant of the times, "To all Christian people" (P.R.C.I., 2).

A more amusing act in the drama followed, and shows the perturbation that fell upon the knaves.

An honest Republican, William Steele, of Gray's Inn, who, from being Recorder of and M.P. for London, had been promoted by Cromwell Chief Baron of the Exchequer, was made

Lord Chancellor of Ireland on the 26th August, 1656 (L.M., pt. 2, p. 16). Ludlow describes Steele as " a man of great prudence and uncorrupted integrity (L.'s M., 313). He arrived in Dublin in October, 1656, and soon afterwards it dawned on the Cromwellian Executive there, that a rash thing had been done. They knew that the Protector had undertaken to make good the promise of Charles I. by restoring the Ulster Charter to the City of London, and that this included a grant of the River Bann. Clotworthy also realised that his lease, if attacked, could not stand investigation, being unsupported by any Signet Letter covering the river. Chancellor Steele probably stung their consciences with thrusts and threats. As the result, Sir John evolved a scheme by which he and the obliging Commissioners could escape from the springe in which they were fast-held.

There must have been much shaking of heads before a way out of their difficulty could be found. At length it was decided that the best approach towards mending matters could be made through Henry Cromwell. The son of the Protector was willing to be serviceable, being himself involved in the wrongful grant of the Bann. It was determined that Henry Cromwell should address a letter to the Secretary of State for the Commonwealth in London, John Thurloe, who was a devotee of the family, and beg him to secure from Oliver Cromwell a new Signet Letter, which would serve as a warrant for Clotworthy's lease.

Sir John drew up a letter, which was signed by Henry Cromwell. Its craft is only outdone by the wording of the postscript, and that, in turn, is matched by the " enclosure " which accompanied it. This enclosure took the shape of a draft Signet Letter, which, without in any way disclosing its object on its face, would, if signed by the Protector, have either sanctioned what had been done, or have authorised the grant of a new lease covering the Bann. The " trap " letter of Henry Cromwell to Thurloe, which Clotworthy drew, reads :

" Dublin, 12th December, 1656.

" In obedience to his Highness's letter of the 13th May, 1656, a copy of which is herewith sent, there is a grant passed

of (*sic*) Sir John Clotworthy of the lough therein mentioned, wherein there is passed several creeks and fishings on the lough and river of Bann, according to the particulars mentioned in the Surrender of the then and now Lord Chichester, dated 1st July, 1640, for which there is a considerable rent reserved.

" Now the words of his Highness's Letter of the 13th May, being general with reference to the word of the Surrender, and Sir John Clotworthy being informed that it will corroborate his title to have what is already granted to him, by Patent, warranted by the express words of his Highness's Letter I desire you to procure the enclosed to be signed by his Highness, which will answer the justice of Sir John's desires, and be esteemed as a respect done to your loving friend and servant,

" H. Cromwell.

" I desire you not to think this to be a letter of course, because I have made use of another hand, but am confident you may by this oblige a worthy person, and put an additional engagement upon,

" Your servant,

" H. C."

Had the artfully drawn " enclosure " (quoted below) been signed by the Protector it would have completely condoned the embezzlement which his subordinates had perpetrated, or would have afforded an option to Clotworthy to take out an entirely new lease, in which both the Bann and Lough Neagh could rightfully have been included.

Its framework shows how " Signet Letters " were contrived ; but this one remained forever in draft, unsigned and undated. The raw material of Patent-fabrication for which its text provided exhibits the embryo stage of such grants. The proposed " Signet Letter " thus forwarded to Thurloe by Henry Cromwell for his father's signature, reads :

" Right trusty and well-beloved. We greet you well.

" Whereas by our Letters given at Whitehall the 13th of May last, to the end a growing pension of 6s. 8d. per diem due unto Sir John Clotworthy for life, might be extinguished,

and that some mark of the value of his and his father's services in the dominion of Ireland might continue upon him where the services were performed,

" We did direct that a Lease of 99 years be made unto the said Sir John Clotworthy of the lough called Lough Neagh, as it was surrendered to the late King on the 1st July, 1640, by the then and now Lord Chichester, such acknowledgment of rent being reserved on the same as to you, our Deputy and Council of Ireland, might seem meet ;

" And whereas we are given to understand that in the said lease, so made unto the said Sir John Clotworthy, there is reserved unto the said Lough and River of Bann a rent of £40 per annum for the first seven years, and £50 per annum for the remainder of the said time, payable to us, and our successors, in pursuance of our said direction, signified by our said Letters of the 13th May last.

" Now, to the end the said Sir John Clotworthy and his assigns may enjoy the full benefit of our gracious favour and intentions towards him concerning the Lough and River, for the distinct rents reserved on the same, and to prevent misconstructions that at any time hereafter may be made to the prejudice of the said Sir John Clotworthy or his assigns in this particular,

" And lest the words of our said Letters of the 13th May last may be interpreted not to be so full and particular as in this case now requisite, our will and pleasure is, and we do hereby direct and declare

" That, by the general words in our aforementioned Letters we intended and do intend, unto the said Sir John Clotworthy and his assigns, a lease and demise for 99 years of the premises, according to the extent of the words of the aforesaid Surrender of the said Lough and River of Bann, together with the creeks and fishings thereof ;

" And our will and pleasure is, and we accordingly authorise you, whenever the said Sir John Clotworthy, his executors, administrators or assigns, shall desire it, that you cause a new and effectual grant in due form of law to be made, and passed by Letters Patent under our Great Seal there, concerning a lease or demise from us to the said Sir John

Clotworthy, his executors, administrators or assigns, for 99 years, of the premises, as fully and amply as they are expressed in the said Surrender.

" For the so doing, these our Letters shall be, as well to you our Deputy and Council and Commissioners for the custody of our Great Seal here now being and all other our officers and ministers there whom it may concern,

" Or to any other our Deputy, Chief Governor or Governors, and Council and Commissioner, Chancellor or Keeper of our Great Seal there, which hereafter for the time shall be ;

" And to all other our officers and ministers whom it shall or may concern, and to every of them, sufficient warrant and discharge in that behalf.

" Given at Whitehall, this day of 1656."

The draft, with Henry Cromwell's missive, was enclosed to Secretary Thurloe by Clotworthy, with another letter from himself. (This is plain from its terms, in spite of the twelve days' difference in date which the correspondence discloses.) The modest " etc." by which Sir John evades mention of the Bann is a pregnant trifle to mask such a trick as he had carried out.

" Dublin, 24th December, 1656.

" The favour I received from his Highness at my coming from London did soon receive its despatch by the Council here, and accordingly I have a lease of the Lough, etc., under the Crown Seal, though at a rent very considerable.

" But finding the express words of his Highness's Letter of the 13th May last somewhat general, with reference to the surrender of the Lough, I am advised that it is necessary his Highness signify his pleasure in like express terms as in the surrender, which his Highness, for brevity sake, by the Letter of the 13th May relates unto.

" And therefore, having showed the necessity of this explanatory letter to my Lord Henry Cromwell, his Lordship most nobly did offer to recommend it to your favour by what accompanies this—which will, I hope, be found so reasonable a request that the presenting as from my Lord Henry the motion, his Highness will ratify and explain his former favour,

" And thereby highly oblige his Highness' and your most humble and most obliged servant

" JOHN CLOTWORTHY."

(T.P., vol. v. 701, 729.)

How innocent it all seemed. An " etc." covered the most valuable river in the Three Kingdoms, which had been granted to the most influential citizens in the world, and which good Sir John had " conveyed " (the wise call it) unto himself.

Thurloe, however, was not to be trapped. He had probably been put on his guard by Chancellor Steele, whose friend he was, and who, as a former M.P. and Recorder of London, owed gratitude to the Corporation, and could not be bent to the purposes of chicane. Besides, the arm of London's Corporation was long, and the ways of the Protector stern. So the laborious volumes, which disclose the despatches and replies of Cromwell's careful Secretary, contain no word of compliance with the request for a fresh " Signet."

Yet Henry Cromwell was not a person to be neglected ; and Clotworthy, too, towered high. Thurloe, however, knew there were some feats too bold to be essayed even by a man of his quality. Some reply he had to make ; but what was he to say ?

To the son of the Lord Protector a brief acknowledgment went. It has a most comic touch :

" Whitehall, 21st January, 1656-7.

" My Lord,

" I had thought to have writ to your Lordship at large by this post, but am at the present troubled with a cold, that I can scarce hold up my head to ask your Lordship's pardon and excuse for my brevity and abrupt signing myself

" Your Lordship's most humble and faithful servant,

" JO. THURLOE."

(T.P., vol. vi. p. 11.)

The rest is silence.

Oliver Cromwell never signed the "enclosure" which Clotworthy presented to Thurloe. Doubtless he never knew of the violation of duty committed by his Parliamentary Commissioners in Dublin. Certainly he never condoned their misconduct.

Seven months later the Bann was regranted to the Corporation of London by the Lord Protector under the Great Seal of England.

Clotworthy's proposed "Signet Letter" remained an undated and unsigned draft in the Secretary's keeping. As such it was published eighty years later.

Thurloe held his papers so precious that, although he was himself left unmolested after the Restoration, he concealed them in a false ceiling in the garret of his chambers in Lincoln's Inn, where they lay undiscovered for fifty years.

To-day, after nearly two centuries, they are disentombed from the graveyard of forgetfulness, as additional witnesses to the crime which they attest.

Possibly the bitterness arising out of the intervention of Steele in the Clotworthy grant, explains the peevish tone of a letter which Henry Cromwell sent from Dublin to Thurloe. On the 23rd June, 1658, when Steele was contemplating resignation, the "Lord Henry" (now the Deputy) wrote:

"My Lord Chancellor desiring an hour's private conference with me, Saturday last was appointed for that purpose. . . . He complained of all the judges here, and said they did upon occasions give their opinions in points of law not according to their conscience, but to please. . . . I think I have heard from you that my Lord Chancellor, at his coming over, made large professions how officious and serviceable he would be to me. I suppose he meant not as a subject, but as a tutor, or guardian to a minor; for, at his first coming, he appointed several private meetings with me (which I diligently observed), and then he read lectures to me of affairs and maxims of State, taught me how to carry myself at the Council, gave me rules how things should be managed at the Board, how abroad; and, lest I should forget my lesson, gave me three or four sheets in writing of those rules which he thought of most importance. I listened to

him with a great deal of attention, supposing that, if I got nothing else, I should get his measure " (T.P., vol. vii. p. 198).

If Cromwell heard of " Lord Henry's " Patent of the Bann, he treated it as a nullity. It would have stunned men of affairs in the England of that age, to be told that where no Signet Letter existed to authorise a grant, the scrivenery of a Dublin Patent could be called in aid, to supply the vacuum. In the minds of the lawyers of that epoch, the absence of regal authority was fatal to the validity of a Patent. Variances between Patents and Signet Letters were then well known to every lawyer. If one granted more than the other, or a repugnancy existed between them, the Courts examined the " Signet " to construe the Patent. This though the Patent bore the Great Seal of England, and the " Signet " was graced by no such high symbol of authority.

The law was that the extent of the grant was gauged by the scope of the " Signet." Hence if the Corporation of London were apprised that Clotworthy's Lease included the Bann, their advisers might scoff at it as waste paper, since it lacked, as to the river, the pre-essential of a Signet Letter. Judges then were not impressed by the potency of the Irish Great Seal as a talisman by which the State or its subjects could legally be plundered.

The " conveyancing magic " of a Dublin Patent was not a doctrine of the seventeenth century, and its power to work a forfeiture to property, granted to others by the King, would certainly not have been recognised.

Yet, in spite of Thurloe's delicacies, of Steele's integrity and the Protector's grant to the City of London, Clotworthy's craft had a complete success. For, although he never received the fresh Signet Letter for the Bann which he sought from Cromwell, the turn of fortune's wheel and the Protector's death enabled him to hold the river without it. His lease ran its full 99 years, and served to baulk the Londoners effectively of the possession to which their Charter and its renewal entitled them. The manner in which they were baffled, first by Sir A. Chichester, then by Clotworthy, and last by Lord Donegall, seems now incredible. It was a triplet of discomfiture.

Cromwell died in 1658. The confirmation of the lease by Charles II. at the Restoration of 1660 has next to be traced, and we shall then see how Lord Donegall, following in the trail of every miry footprint left by Sir John, secured the reversion of that trickster's grant. One Arthur Chichester fitly and featly followed another. Lord Donegall was "the nephew of his uncle."

CHAPTER XXXIV.

RATTING REPUBLICANS.

When Charles II. landed at Dover, on his Restoration (25th May, 1660), the Anglo-Irish Cromwellians had become his most self-interested partisans. Charles could have come to Ireland as King, either with their support or that of the native Irish, a year before he landed in England. Sir C. Coote and Lord Broghill (Boyle) had tidings through Sir Arthur Forbes, who was sent to treat with the exiled King in Brussels, of his Majesty's engagement not to disturb the Cromwellians in the Irish lands they had seized.

Charles wrote to Coote, on the 16th March, 1660 :

" Whatever you shall promise and undertake in my name and on my behalf that is in my power to perform, for the encouragement and reward of those who shall join with you in my service, I do give you my word to make good " (O.P., v. ii.).

The late Oliver's confederates assembled in Dublin in Convention on learning the arrangements of General Monck to bring Charles II. back. Dublin Castle was seized, and with the seat of power in their hands, the devoted Republicans who formed the Irish Executive forthwith turned ultra-Royalists, as the most profitable course to pursue. That they might have no critics on their past, and no rivals in loyalty, they determined " that all the gentlemen of Ireland should be committed to close prison, to render them incapable of contributing to his Majesty's Restoration, in case his Majesty should choose to pursue his Royal right by dint of sword, rather than to condescend to such disadvantageous conditions as the Conventionists did hope, and were fully

persuaded, would be imposed upon him by the Parliament of England. . . . In pursuance of this resolution, all the prisons in Ireland were filled with the nobility and gentry of that nation.

"Sir John Clotworthy, a man famous for plundering Somerset House, murdering the King's subjects, and many other treasons and horrid crimes, was despatched to England" (S.S.I., 79).

The ever-pious Blair sets down things differently:

"That truly worthy person, Sir John Clotworthy, a member of the Convention, being then in Dublin, and finding out these designs of the Lords (Coote and Boyle), so wrought with them that they concurred to send one from them both to the King, with conditions for Ireland as well as from England, on his Restoration. And they both pitched upon Sir John to go on this negotiation. He accordingly went as far as London on his way to Holland. But Monck's actings prevented his further journey" (H.P.C., 202).

His instructions from the Convention are dated the 30th March, 1660 (H. MS. C.), but Clotworthy appears to have previously set sail for England. The "Egmont Papers" show how influential he had become, and in any case Sir John resorted much to London (S.P.Ad., 623). He had become an active speculator in Irish land debentures, issued to pay the army (S.P.Advtrs., 6-720). Many soldiers were then seeking to make market of a doubtful security, for the scrip was rather at a discount A.D. 1659-60, when the Irish officers who surrounded Charles II. in Flanders were packing their knapsacks for home. Men in the "inner ring," who had early intimation of Monck's policy and of the King's pact not to disturb the Cromwellians, easily picked up good bargains.

During the joys of the Restoration it would have been foolish to linger in Ireland when profit might be made at Court (C.T.P., 224-227). So Sir John was buzzing through London as a Royalist zealot when Charles II. landed; and at once looked for his reward. Three days before the King reached England, Lord Aungier wrote to the Earl of Ormonde:

" London, 22nd May, 1660.

" We have a knot of Commissioners from Ireland attending the Parliament here, who, being concerned (and particularly Sir John Clotworthy) in the new purchase there, refuse to think themselves secure in any Parliament which shall be called in Ireland except they can exclude out of the Act of Indemnity (which is preparing now in England) all those who have had any hand in the Rebellion—under which notion they comprehend promiscuously all those of the Popish religion, who have been either sequestered or in arms. This work is driven hard " (O.P., vol. ii. p. 347). That picture of the regicides preparing to proscribe less guilty " rebels " must have made Ormonde smile.

Sir John, of course, foresaw that the King's promise not to interfere with Cromwell's grants, would not be held to include any obtained illegally. So on the 6th August, 1660, he lodged a petition for the confirmation of the lease of Lough Neagh and the Bann. This petition contained all necessary falsehoods. It opens with a thumping lie ; for it sets forth that he " had a pension of 6s. 8d. a day granted to him by Patent dated 2nd July, 1640, under the Great Seal of Ireland."

No doubt the Great Seal of Ireland had before this been set to many strange uses. Those entrusted with its custody had often wielded it, as a burglar employs a jemmy, to rifle the Royal demesne, rather than as a symbol of the security and safety of public property. But in July, 1640, it had not been prostituted, as Clotworthy averred, to provide that freebooter with an unearned pension. The date he fixed upon for the grant exposes the untruthfulness of his allegation. In April, 1640, the Lord Lieutenant (who should have sanctioned or recommended such a pension) had quitted Ireland for ever. Strafford then left to quell the Scots rebellion, and never returned. His deputy and friend, Wandesford, granted no pension in his absence to the chief enemy of his patron. Moreover, the Crown was so pinched and distressed for money in July, 1640, as to make the mere thought of such a pension even to a favourite (which Clotworthy was not) most improbable.

Sir John doubtless chose 2nd July, 1640, because to have mentioned 2nd July, 1618—the true date of the joint pension—would have challenged inquiry as to the events of the intervening forty-two years, and the absurdity of the original endowment of a youth of twelve, would have become transparent. Having to frame his lie in 1660, he plumped for 1640 as the safest date he could assign for the grant. The date he hit on was the eve of the confusions of the late reign, when it might naturally be said that the absence of the Patent or the King's Letters to authorise it, could be explained by the civil commotions which shortly ensued. He had secured the connivance of Bishop Bramhall, who was Strafford's friend, for the reception of the Petition, and therefore romanced in safety.

Having thus launched the major mendacity, the Petition then plunged into minor misstatements: "That petitioner was obstructed in the receipt of this pension by the usurper Oliver, but, on application, the late Oliver granted to him, in lieu of the said pension, a lease for 99 years of Lough Neagh and the River Bann in Ulster, with the fishing thereof, reserving a considerable rent for the same, as by the so-called lease, dated 14th August, 1656, may more at large appear. On July 1st, 1640, this Lough and River had been delivered up to Charles I., and was undisposed of. Petitioner gave up his pension in consideration of receiving this lease. He prays for equitable terms, although his right be no greater than is herein expressed" (S.P.I., 20).

The King had in London a number of persons familiar with Irish affairs, to advise on the Petitions which poured in on him. One of these was Bramhall, Bishop of Derry (soon afterwards appointed Primate of Armagh), who had fled from his See, and joined the King in exile. At Brussels he exercised "curiously unepiscopal functions as a Royalist prize agent" (H. MS. C., 1904, p. 125). Bramhall was now ready to befriend Sir John, and to him the Petition was referred. The Bishop dealt with it without delay, and readily accepted the legend about the pension and the lie about the lease. On the day this Petition reached Bramhall his Lordship reported:

"I have studied the Petition. Sir John Clotworthy is certainly entitled to some compensation in respect of the pension of 6s. 8d. a day. Also it is certain that both the fishing and the soil of Lough Neagh and the Bann above the Salmon-Leap are now in the possession of the Crown, and may be granted by his Majesty upon any conditions which he please to impose.

"I know this, beause I mediated and concluded the Surrender of Lord Chichester to the Crown. I did this by the appointment of the late Earl of Strafford, then Lord Lieutenant of Ireland, for two reasons. First, that it might not be possible for any fee farmer or other person to destroy the salmon fishing at the Leap, or to lessen its value by taking salmon when they were out of season, or at times forbidden; and secondly, because I apprehended that a great part of that great Lough might be drained and add a considerable amount to his Majesty's revenue, by reserving a small fee farm rent upon every acre that should be drained. I may have been wrong, but my friends were ready to have adventured and made a trial. On the whole, I think Sir John Clotworthy may have a lease of Lough Neagh and the River Bann above the Salmon-Leap, for the same term and at the same rent that he held it formerly, with these two provisoes or restrictions," etc., etc.

The Bishop could also compose romances, and Strafford must have lived and died in vain when this version of the cause of the surrender of the greatest lake and most fishful river in the Three Kingdoms was palmed off on the son of the King for whom he perished on the scaffold.

Clotworthy, therefore, in spite of his past and his Presbyterianism, won his way. Doubtless he failed not to enlarge on his imprisonment by Cromwell, when he favoured the acceptance of the martyred King's concessions sent from the Isle of Wight (H.C., 484). His friends at Court were strenuous, he was well equipped with money and Coote was his confederate. So in the same month of August, 1660, the following note to the King was presented by the Royal Secretary, Nicholas:

"As the King referred Sir John's Petition to the Bishop

of Derry, and as the Bishop has reported it, it is requested that the King order a warrant to be prepared for his Royal signature, for drawing a Patent in Sir John's favour, according to the report of the Bishop of Derry " (S.P.I., 31).

What was the cause of this haste ? Why could not Clotworthy await the passing of the Act of Settlement—the proscriptions of which he did much to envenom ? What was the urgency which caused pressure to be put suddenly on Charles II. to grant a special favour to one of his father's fiercest foes ? The answer must be spelled out of the English State Papers. On the 1st August, 1660, Captain Jowles writes from Dublin to the Admiralty that he is ordered " to fetch Lord Chichester from Belfast to Chester in the frigate *Wexford* " (S.P.E., 174). On the 17th August, 1660, Richard Dermot writes from Dawpool, Cheshire, to the Navy Commissioners : " The *Dolphin* is expected from Carrickfergus " (S.P.E., 265). The ship's name had meanwhile been changed by the Royalists, as " Wexford " commemorated a Cromwellian massacre.

Lord Donegall was under weigh for England, but a little late. It was remiss of him to tarry at home while Charles II. sat three full months on the throne, without making arrangements to greet the new Sovereign. Rivals more alert were beforehand. Still, when the tidings of his coming reached London, they must have caused much uneasiness to Clotworthy and his friends.

On the 10th September, 1660, Captain Jowles advised the Navy Commissioners that he had arrived at Chester with the Earl of Donegall and family (S.P.E., 265). In a week or less they would reach the capital. Now, Lord Donegall had fought for the King, not for Cromwell. His friend the Duke of Ormonde was at Court daily, advising his Majesty on Irish affairs, and was all-powerful. It was on the Duke's recommendation, in 1647 (while Charles I. was in captivity) that in his father's lifetime Sir Arthur Chichester had been created Earl of Donegall, for the loyalty he displayed when the Scotch army in Ulster deserted the Royal cause. Afterwards, when Ormonde undertook to hand over Dublin and other strong places to the Cromwellians, on the ground that he " preferred

English rebels to Irish rebels" (C.O.), Lord Donegall was one of the hostages selected by him to be sent to London as a guarantee for the fulfilment of the surrender. Clotworthy was on the Joint Committee of both Houses which sent answer to these hostages, on the 11th May, 1647, refusing "to recognise them as having any right to treat; and that, as for receiving the Sword of State in Ireland, and towers of Dublin Castle, they have instructed Commissioners to deal in that matter" (S.P.Ad., 746).

Naturally it was far from agreeable to Lord Donegall that a rival and neighbour should be able to boast that he had wheedled from Cromwell a lease of Lough Neagh and the Bann.

His arrival at Court would, therefore, set awry the schemes which Clotworthy was hatching to secure a confirmation of the lease. Despatch became vital, and with it, secrecy of plan and purpose. The process of taking out a Patent for the fisheries, hitherto recommended by Primate Bramhall, had become too slow and dangerous for Sir John. The formalities of a Patent would necessitate a reference to Dublin, and endless delays. Opposition must arise; the inclusion of the Bann without a Signet Letter from Cromwell might be discovered, and the fable about the pension would be exposed. So, instead of pressing for a King's Letter for a Patent, Clotworthy secured the promise of a personal confirmation of the Protector's lease by Charles II.

There was novelty in the idea of making a King, whose father had been killed by Cromwell, confirm a Cromwellian lease; and Sir John having cheated the regicides in 1656, enjoyed the double pleasure of now using this cheat to defraud the King in 1660. In this it seems probable that his success was innocently furthered by Colonel Daniel O'Neill, Groom of the Bedchamber to Charles II.

O'Neill was the son of Sir Con of Claneboy, whom Hamilton and Montgomery plundered, and he had much influence with the King. Clotworthy consorted with Colonel O'Neill; and, knowing his history, could appeal to his traditions. O'Neill required Sir John's help in the Irish Parliament, for the restoration of his own estates and those of his kinsmen, part

of which were held by Clotworthy, as a "debenturer" in Cromwell's army.

O'Neill had been brought up in England a Protestant, and was married to the Countess of Chesterfield. In the previous reign Archbishop Laud, moved by the plunder of Sir Con's estate, appealed to Strafford for justice on his behalf. Laud's letters, though written in vain, do credit to his good feeling (M. MS., 84). Clarendon describes Colonel O'Neill as "very dexterous in compliance where he found it useful . . . and of a courage very notorious" (C.R., vol. iii. p. 536). O'Neill, on the death of his warrior-uncle, Owen Roe O'Neill, in 1649, had been tendered the chief command of the Irish forces against Cromwell, on condition that he would turn Catholic, but rejected the offer (C.O.), and, having fought gallantly and incessantly on the Royalist side in England, Ireland and Scotland, went into exile with Prince Charles. After the Restoration the King made him Postmaster-General of the Three Kingdoms, and he held his own against Ormonde, Lord Lieutenant of Ireland, as to Irish patronage. He was M.P. for St. Ives, became a member of Gray's Inn, and received numerous grants in London and its neighbourhood. When he died the King mourned, and wrote to the Duchess of Orleans: "Poor O'Neill was as honest a man as ever lived" (D.M., vol. ii. p. 27). Bramhall calls him "my noble friend, Mr. O'Neill" (C.L., vol. i. p. 163).

It was not to be expected that an O'Neill could love the name of Chichester, or that the Groom of the Bedchamber was likely to forget how a corrupt Deputy had driven his kinsmen into exile, and imprisoned his father in Carrickfergus Castle on a groundless charge of treason, in order to seize his estate. When, therefore, Lord Donegall arrived in London to kiss the Royal hand, his approaches would hardly be prospered by the son of Con of Claneboy. Ere long his lordship had the mortification to learn that Clotworthy had anticipated him as to the fisheries. Still, Lord Donegall exercised influence enough to delay the grant. In spite of the pressure on the King to sign the new lease, nothing was done during the autumn of 1660.

Clotworthy's mainstay was the "Declaration," by which

Charles II. undertook to confirm all grants to the Cromwellians, and of course the King was unaware of the infirmity attaching to the purloined lease.

In September, 1660, Clotworthy and Lord Broghill, with other agents of the Dublin Convention proposed to Charles II. "that an Act should be passed to confirm all the estates of the adventurers and soldiers as they stood on May 7th, 1659." Had this been agreed to, Sir John's lease would, by a side-wind, have secured confirmation. Against so sweeping a project counter-proposals were put forward on behalf of the Royalist owners. London was thronged with Irish gentlemen who had served in the King's armies or remained faithful to his interests, and Charles II. was embarrassed between his pledge to the abettors of regicide and his desire to reward the loyalty of friends. While Cromwell's bones were being dug up as a warning against treason, Oliver's Irish adherents were having their claims to rich estates nicely balanced at Whitehall against the right of Cavaliers who had risked and lost all for two Stuart Kings. Every day's intrigue brought fresh anxiety, and both sides realised his Majesty's perplexities, and strove to overcome them.

In October, 1660, Clotworthy bethought him of an expedient for strengthening his hold on the invalid lease. Deeply as he was engrossed in affairs of State, and distant as he was from the Bann, he decided to pay rent under the "usurper's" grant. That he had ever previously done so is not on record, but he forwarded £20 from London in October, 1660, to discharge the current half year for both river and Lough. His Petition had be-slurred the void Lease of the execrated Cromwell, but an entry in the office of the Clerk of the Pells, Dublin (13th October, 1660), shows that a half year's rent to 29th September, 1660, was paid by him on that date. The lease gave six weeks' grace, yet so punctual and loyal a tenant was Sir John that he remitted the amount within a fortnight.

Three weeks later a scene is described by Carte which, by a triumphant misrepresentation, ended in securing the King's acceptance of the proposition that the Cromwellians should be left all the estates they had seized up to the 7th May, 1659.

This included the Royal ratification of the misgotten lease of 1656. Charles II., disturbed by the threats of regicide and royalist, felt unable previously to make up his mind as to how their conflicting claims could be reconciled. The area of Ireland was limited, but three wizards descended on Whitehall and showed his Majesty how the island might be expanded.

Carte explains: "Ormonde, and others who knew that kingdom, not thinking the forfeitures sufficient for that purpose, the King was at a loss which to prefer of these interests which seemed incompatible. Whilst he laboured under this difficulty, the Earl of Orrery (Broghill, son of Boyle, Earl of Cork), Sir John Clotworthy, and Sir Audley Mervyn, on the 9th November, 1660, presented him with an estimate of lands and remainders which, when the adventurers and soldiers were confirmed in their possessions, would serve to reprize and satisfy such of the Irish as his Majesty should be pleased to restore to their estates. This was the famous paper which removed all the difficulties that had hitherto obstructed the settlement of Ireland. The King was delighted" (C.O., v. ii. 215).

The "famous paper" was a mere framework of imposture. An unimpeachable witness to its wickedness was the Irish Lord Chancellor Eustace, who had in 1647 received the thanks of the Parliament at Westminster for "his singular affection for the English nation . . . and his earnest advancement of the Protestant religion." Writing to Ormonde, he sums up the so-called "settlement" in these words: "Those who fought against his Majesty are to have the estates of those who fought for him." Still, falsehood throve famously, and Charles II. not only accepted the scheme presented to him by the Cromwellian trio, but within six days of the presentation of the "famous paper" confirmed the knavish lease of Lough Neagh and the Bann under the Great Seal of England (15th November, 1660).

This signal Royal favour to Clotworthy was won in spite of Lord Donegall's presence in London and the covert opposition of Ormonde. The new lease contained an amusing recital. A preamble declares that it was granted

to Sir John on the ground that the long-suffering Republican had been " obstructed by the usurper Oliver " from receiving his pension of 6s. 8d. per diem ! The King's grant adopted the *non obstante* clauses of the regicides, as well as the inclusion of the Bann. So, by a hardy master-stroke, and without any pretence of a finding of " office," the rights and immemorial user of the fishermen of five counties, whose toil for generations furrowed the waters of Lough Neagh, were thrust out of sight.

Before another week Sir John was created a peer, with the title of Lord Massereene and Baron of Lough Neagh (21st November, 1660). Sir Charles Coote at the same time became Lord Mountrath, and Broghill Earl of Orrery. While Cromwell's skull bleached on Westminster Hall the brows of his bantlings were decked with coronets.

The new Lord Massereene affected much gratitude to those who helped to advance him. In his nephew's phrase, he " promised mountains." A week after his elevation he wrote Colonel O'Neill :

" Three Elms,
Chandos street,
26th November, 1660.

" We are kept so late this night in our attendances on the King that I could only now send you the enclosed. I hope that your improving the King's favour you will produce the desired effect. When you have got the King's order of reference I will attend and do all I can to help in finishing your business."

The enclosure was the draft of a proposed King's Letter which O'Neill was to procure from Charles II. to secure the insertion of a clause in his favour in the forthcoming Irish Act of Settlement. The draft ran :

" Note that the King refers the petition of Daniel O'Neill, Esq., to the Lord Chancellor of Ireland [Eustace] and the Earl of Orrery [Boyle], who are to inform themselves of the allegations in the petition mentioned. Finding them to be true, they are to send for Lord Massereene and such others as they find convenient, and either satisfy petitioner or

report to the King, giving their views as to the best way of satisfying him " (S.P.I., 1660, 100).

The procedure recommended to O'Neill was a replica of that adopted four months previously by Clotworthy himself when he got his petition as to Lough Neagh referred to Bishop Bramhall. It also recalls the abortive " letter " which Sir John drew up for transmission through Thurloe to the Protector, in 1656.

Needless to say that at the earliest opportunity the new-made peer betrayed the Groom of the Bedchamber, as he had befooled Cromwell and defrauded the King. Col. O'Neill wished to be restored to that part of his father's lands in Antrim held by Lord Massereene. To this his lordship agreed, on condition that he should be " reprised " with an equivalent estate elsewhere—quite a simple stipulation ! A clause recognising this arrangement was inserted in the Bill of Settlement and became law (Section 63). O'Neill, no doubt, was as delighted by Lord Massereene's complaisance as the King had been at the " famous paper."

Very soon it was made plain that the hopes of his House were for ever blighted.

CHAPTER XXXV.

A REGICIDE LEGISLATURE.

The King appointed Coote and Boyle, on the 31st December, 1660, to act as Lords Justices for Ireland in the absence of Monck, Duke of Albemarle, who was created Lord Lieutenant at the Restoration, and Lord Robartes, his Deputy —neither of whom acted. Lord Robartes was forced to throw up the appointment before starting for Ireland, owing to the intrigues of the Cromwellians, who feared he would act fairly towards Catholic claimants (S.S.I.).

Lord Massereene was named one of the Commissioners for executing the "Royal Declaration." This body regulated the principles on which the retention by the Regicides or the restitution to the Royalists of Irish estates was to be carried out.

He returned to Ireland in March or April, 1661, as appears by a Customs warrant, 13th March, 1660-1, permitting Lord Massereene, Sir James Shaen and Sir Audley Mervyn, to embark nine horses for Ireland free (T.C., 224). Before long he was back in London, as on the 31st January, 1661-2, Lord Massereene again received a permit to ship his horses free into Ireland (T.C., 327).

The "Royal Declaration," with numerous explanatory clauses, was embodied in the Bill of Settlement in 1662. Carte asserts that Coote and Boyle (Earls of Mountrath and Orrery) "took care to raise privately amongst the Adventurers and soldiers between £20,000 and £30,000, to be disposed of properly," *i.e.* in bribing the courtiers of Charles II. to secure that the clauses of the Bill should be favourable to their claims.

On 22nd December, 1662, Massereene submitted to the Irish House of Lords a draft of a letter of thanks to the Solicitor General for England, presenting him with " a small token of their thankfulness " for his services in framing the Bill. This was voted by both Houses, and presented by the Speaker, Sir Audley Mervyn (L.M., pt. 7, p. 16).

For the Regicides held the " upper hand " in the packed Irish Parliament, and a mean acquiescence in their designs was the note of the restored regime.

The newly elected House of Commons of 1661 consisted of 260 members, of whom all but 64 were burgesses from petty " Corporations " crammed with Cromwellians. The King regretted its composition, as appears from the letter of 30th April, 1661, from Sir Edward Nicholas, his Secretary of State, to Lord Chancellor Eustace : " I am sorry to understand that the Adventurers and soldiers are like to have so much power in the approaching Parliament " (S.P.I., 322). Naturally, such a Parliament sent Commissioners to his Majesty to demand that the Bill of Settlement should "make good all the estates of Adventurers and soldiers whatsoever," and owing to the help they expected to receive from Lord Massereene and Lord Kingston, who were interested in what was called the " doubling ordinance," they had reason to be hopeful.

The " doubling ordinance " was invented in 1643, at Westminster, after Charles I. had " raised his standard " at Nottingham in 1642, when Parliament was in straits for money to maintain the war. Carte illustrates its working by explaining that a person who adventured £1,200 would, on advancing another £300, be allowed £3,000 worth of Irish land. If the Adventurer refused to make the additional advance any outside speculator could pay the money and secure the benefit. In the new Irish Parliament of 1661 " the execution of this ordinance was referred to a Committee of both Houses, wherein Sir John Clotworthy (a substantial Adventurer, and concerned little less than £1,000 a year in the doubling) was the *primum mobile* " (C.O.). Clotworthy had originally sat on the Parliamentary Committee at Westminster which renewed the " doubling ordinance " in 1645 (S.P.I., 1633-47, p. 418).

The Irish House of Lords, seeing the Lower House packed with soldiers, took alarm at the Resolution of the Commons, which embodied the proposal rejected by Charles II. in September, 1660.

" The Earl of Kildare, desirous to save the families of the old English race from ruin," got the Lords to appoint Commissioners to the King, to cope with the Commons' delegates. The Lords' selection included Lord Kingston, who was one of the devisers of the " famous paper." To be in good company " Lord Massereene asked leave of the House to go into the country for a month, and having obtained it upon that pretence, shipped himself immediately for England. This occasioned the Earl of Kildare to move the House ' That a letter might be wrote to one of the Secretaries of State to signify that they had employed four of their Members to attend the King about the public affairs of the Kingdom, and to desire that his Majesty should not receive any representation thereof from Lord Massereene or any other Member sitting in their House '—which motion was approved and accordingly passed the House " (C.O.).

Lord Massereene when in London doubtless kept Daniel O'Neill entertained by a draft of the provision agreed on between them, which in the Act of Settlement appears as Section 63. It is fair-seeming, and provides that " The Groom of our Bedchamber " should be restored to that portion of his estate held by Lord Massereene, on condition that his lordship received equivalent lands elsewhere. Carte throws light on the device which made Lord Massereene so complaisant : " When the Lords Justices [Coote and Boyle], in obedience to his Majesty's Letters, had ordered the restitution of the Earls of Westmeath and Fingall and a few others, the Commissioners [of Claims] refused to give an Order for the possession of their estates, under pretence that there were no ' reprisals ' to be had for the Adventurers settled upon those estates. The meaning of this was that they had granted out all the lands appointed for reprisals to their own friends, under the notion of ' cautionary reprizals,' or *reprizals de bene esse*. No pretext could be more unwarrantable or irregular, for there was not a word about

'cautionary reprizals' in the Royal Declaration, and yet, under this palpable fraud, manifestly devised to obstruct justice, the whole stock of reprizable lands vested in half a dozen persons. Thus, the Earl of Mountrath [Coote] and the Lords Massereene and Kingston had got into their hands most of the lands in the counties of Dublin, Louth, and Kildare, and the Barony of Barrymore" Co. Cork (C.O.).

When Massereene agreed to O'Neill's clause, he knew that all the "reprizable" lands had already been passed to himself and his friends, and that the provision would not hurt him. Years passed by without even any attempt to give effect to it.

On 17th August, 1664, the King wrote the Viceroy complaining of the delay (S.P.I., 428), but O'Neill died on the 24th October, 1664, without getting any benefit from Section 63. Massereene even defied the personal wishes of Charles II. as to another of the O'Neills whose estate he also held. This was Sir Henry O'Neill, of Killileagh, Co. Armagh, who had not been specially named in the Royal Declaration. Although a ward of Charles I. (M., 401), and only a boy of fourteen at the time of the Rebellion, Sir Henry was not within the thorny definition of "innocent Papist" in Clause 11 of the Bill of Settlement. A special Section (64) was therefore introduced for his benefit, and in the debate on it in the Irish House of Lords Lord Massereene showed his teeth. Taking the printed paper containing the King's Declaration (for the execution of which he was a Commissioner) in one hand, he drew his sword with the other, and vowed: "I will have the benefit of it by this" (R.R., 27). In 1663 the King pressed for the restoration of "our trusty and well-deserving subject, Sir Henry O'Neill" (S.P.I., 502), but Royalty was powerless while Massereene lived. In 1664 the King and Privy Council demanded redress for Sir Henry without avail (S.P.I., 505), and not until 1667, after Massereene's death, did he get back his lands.

The Bill known as the "Act of Settlement" was negotiated with the King by the Regicides who were to profit by it. Under its provisions the gallants who stood true to Charles I. were stripped of their possessions, while his murderers were

enriched with broad estate. Even the lands of the Irish Royalists seized by Oliver Cromwell, Ireton, Jones, Axtel, Ludlow, Corbet, Bradshaw, and the seventy principal regicides, were withheld from their rightful owners (O.P., vol. iii. p. 14, and L.M., pt. 4, p. 151).

To defeat the Catholic Royalists—naturally expectant and rightfully entitled—the Clotworthys, Cootes, and Boyles, finding no other way of shutting them out from their properties, granted such of the lands as were held by Regicides excluded from the English Act of Pardon, to the Duke of York. Section 194 made them the perquisite of the pious Prince, for whom, as James II., the grateful Irish afterwards fought and went to ruin. The Duke of York was not ashamed to make himself privy to the plots of his father's executioners and the enemies of his religion, to cheat the Irish gentry who stood by the Royal cause. With his connivance they were legislatively robbed for his profit, of land in sixteen counties, bringing in a rent of £8,726 a year (which would now be nearly £100,000) (H. MS. C., 1881, p. 497). Later on, when the Pope preferred the success of William of Orange to that of the wretched Stuart, such incidents were doubtless recalled at Rome.

According to Carte (vol. ii. pp. 221-231) the Court of Claims, which was engaged in ascertaining the rights of Royalist and Republican, was entirely in the hands of Sir Audley Mervyn (joint-author of the "famous paper," and now Speaker of the Irish House of Commons). Carte describes Mervyn as: "A vain, selfish man, who cajoled all parties and promised everybody, yet meant nothing all the while but his own interest; and who (if the common fame of that time did not belie him) was guilty of shameful bribery and corruption. . . . He governed that Court at his pleasure, and was the mouth of it upon all occasions. He was the most partial man on earth . . . and never knew what it was to be ashamed of anything." Carte adds: "The streets of Dublin were thronged with a multitude of widows who had entered claims for their jointures," and that the Lord Chancellor reproached the Court that not one of these was restored, but that the ladies "were kept there in fruitless

attendance, which enhanced their misfortunes." In reward for such services, the Irish Parliament distributed £23,500 amongst the Commissioners and " other meriting persons " (L.M., pt. 7, p. 16).

In all Ulster only another Celtic Royalist besides Sir Henry O'Neill was restored—the Marquis of Antrim—whose father-in-law Sir Henry was. Lord Antrim's immense estate Clotworthy had seized upon, and he fought bitterly against the order requiring him to surrender it. First he tried, by means of a furious Petition, to override the clause in the Act of Settlement enacting Lord Antrim's restitution (30th July, 1663. S.P.I., 214). Delay was his great weapon, as a limit was fixed within which the decrees of the Commissioners should be given. These seven gentlemen, who sat in Dublin in 1663, were said to be divided in the following manner : " Rainsford, Beverley, and Churchill for the King, Smith, Deering, and Cook for the English interest, and Brodrick for himself " (S.P.I., 231). They gave judgment in Lord Antrim's favour in August, 1663, " which Lord Massereene took very much to heart, and spoke very high in the face of the Court, who were not at all daunted " (S.P.I., 222).

Lord Antrim was the only man who really prevailed over Massereene. Even after his death, the legislation he had contrived was so effective that his heir got an order for an equivalent estate to that of Lord Antrim in 1667 (S.P.I., 485), as promised by Clause 31 of the " Royal Declaration."

Backed by such a friend as Mervyn, Lord Massereene not only retained quiet possession of nearly all his original acquisitions, but gained much additional " reprizable " land. He died in September, 1665 (C.O., v. i.) and his skill in framing draft King's Letters seems to have been transmitted to his heir, who attempted, on Lord Massereene's death, to persuade the Lord Lieutenant to give him command of a naval force on Lough Neagh. The draft Letter was left with the Duke of Ormonde and " another with Mr. Secretary Page," but the request was refused, and nothing was done. The draft is instructive, because of its recital as to the famous pension and the proof it affords that Clotworthy had in his possession

the parchments on which his claim thereto depended, when a few years before he assigned erroneous dates for the Patent. It is also remarkable in that no grant of the River Bann is recited. The draft King's Letter begins :

" Whereas it appears by Letters Patent bearing date the 2nd July, 1618, . . . an annuity or pension is granted during the lives of Sir Hugh Clotworthy and his son John, late Viscount Massereene, as by the said Letters Patent and the Letters under the Signet, bearing date the 23rd March, 1617, may appear.

" And whereas we have been graciously pleased by our Letters Patent bearing date the 21st November, 1660, to create Sir John Clotworthy Baron of Lough Neagh . . . and to grant the said Lough, with the fishing, the bottom and soil thereof, to the said Lord Massereene, as by our Letters Patent bearing date the 15th November, 1660, may appear " etc. (O.P. iii. 246). On Nov. 18th, 1680, he was made " Admiral."

If the gaps in the State Papers could be filled from the private correspondence of the claimants of those days, what a glow of colour would light up the intrigues which followed the Restoration and the ensuing Act of " Settlement." There is no parallel in Anglo-Irish history for the drama enacted after the return of Charles II. in the struggle between Royalists and Regicides to win back or retain coveted estates. On the result depended, in many cases, hunger or plenty, wretchedness or estated rank, and the fate of half a country-side. Where victory inclined one day, it was the next often overwhelmed in disaster.

No pen can reproduce the moving incidents of those years —the personal rivalries, the rage of baffled hope, the sectarian furies, the sighs of waiting widows around the Court of Claims, the wail of hungry gentlewomen cast adrift from their demesnes, the oaths of ragged officers who had followed the Royal ensigns through France and Spain and Flanders and Italy, or wheresoever the King listed, to be met at home with derision by " Clan Oliver " as they besought their own, the spume of installed upstarts mocking the dispossessed, the packing of a Parliament by the Regicides to legalise the loot, the feeble deprecation from the Woolsack of a Royalist Lord

Chancellor, the insolent carriage in the Commons of the Cromwellian Speaker, the corruption of the Judges, the infamy of the Claims Commissioners—so odious as to be branded from the Throne itself—the sharpers' tricks of Debenture-dealers, the death-stillness of the masses of the people, whose cause lay prostrate in fire and sword, the rumours of the Rapparees, the thicket-murders of the rightful heirs, the forcible transhipment of well-born "wood-kerns or Tories" proscribed by the Act of Settlement (Sec. 11) to fight for Norway or Sweden, or Denmark or Poland, or Spain or Portugal, or France, or anywhere, beyond their native shores; the oppressors call on a hunted clergy to promote a banishment of the Swordsmen; and then, when the formidable fighters had disappeared, how "hell itself did gape" at the seizure of the blameless peace-maker, Oliver Plunket, Primate of Ireland, who had penetrated the outlaws' solitudes and risked death to scatter their *skians* on European winds, only to meet, as the reward of loyalty, a rude transportation, and perish, on perjured testimony, attainted and dismembered, on Tyburn mound.

Neither Lord Donegall nor Lord Massereene was driven to plunder and intrigue by the spur of want. Lands they had in plenty, with titles added. Yet they watched unpityingly the anguish of men of longer lineage stripped by legal process of their patrimonies.

The formal arguments connected with the "Bill of Settlement," from the holding of the Convention of the ex-Cromwellians in Dublin, until the acquiescence of Charles II. in their demands, are still preserved. Pleas and replies, rebutters and sur-rebutters innumerable, were lodged with the King. These are bound up in a volume in the British Museum (Ad., 4781). Though the fate of a kingdom once depended on them, they remain unprinted and unregarded. When the last hope of the Irish Royalists flickered away, their Advocate appended a note to his final reply to the contention filed on behalf of the Regicides:

"The foregoing objections to the instructions [for the draft Bill] were delivered in to his Majesty, but never read."

Charles II. was doubtless often tired, after his Restoration!

The plight to which the Irish gentlemen who fought for Charles I. and Charles II. were reduced is thus sketched by one of the editors of the State Papers, Mr. J. P. Prendergast :

" At the reduction of Ireland in 1652, Cromwell was in amity with Spain, and thousands of Irish officers and their men, with Cromwell's consent, took conditions with the King of Spain. From the time of Queen Elizabeth, when Stanley, an English Catholic, in command of an Irish regiment, sent over by Queen Elizabeth to aid the revolted Hollanders against the Spaniards, carried over his regiment to the Spanish service, the Irish had always been confided in by the King of Spain. They had on all occasions ' the right hand,' and were particularly called by the name of ' brothers,' the Spaniards calling none so but them. But in 1654 the Irish officers, having private notice that their own King wished them to quit the Spanish service for the French, they left the Spaniards, and came to the French. In 1655, Cromwell having entered into alliance with France, King Charles II. quitted that country, and in 1656 came into Flanders, then Spanish territory, and employed Ormonde into France to give the Irish regiments notice that they should quit the French and return to the Spanish service.

" This they were entitled to do under an express article made with the French King's envoy, Du Moulin, at Kilkenny, in 1646, that whenever their own King required their services they should have leave to quit the service of France, and be conducted with their regiments to any place they should choose on the frontiers of France. The loss of 10,000 Irish soldiers, the best men in their army, was, of course, highly displeasing to Cardinal Mazarin, the Minister and Governor of France. Accordingly, in hopes of rendering their retirement difficult, he sent as many as he could to the theatre of war in Italy. But such was their loyalty to their King that in a short time five or six regiments were formed out of those lately in the French service, where they left very good conditions, as is recorded in the King's Declaration for the Settlement of Ireland. The Marquis of Ormonde had one of these regiments, the Dukes of York and Gloucester had others, and there were others called after Colonel Grace,

Colonel O'Ferrall, Colonel Darcy, Colonel Dempsey, and other colonels.

" The Duke of York's, Colonel Farrell's and Colonel Grace's regiments continued still embodied at Mardike, in Holland. Great numbers of this class rode in the King's and Duke of York's Lifeguards. Thus, some of them had a present livelihood. The body of them appointed committees to watch over their interests during the concoction of the King's Declaration by the Agents of the Adventurers and Soldiers at the Council Board. There they fared badly, being put last for restoration. They remained in London attending and petitioning while the Act of Settlement was on the anvil in 1662, at the Court at Whitehall, but they did not find their condition mended in the Act of Settlement. And they watched and prayed again in 1664 and 1665, while the Act of Explanation was in contrivance. But this put an end for ever to the hopes and claims of the Irish.

" In 1662 the regiments at Mardike were disbanded. The re-formed, or reduced officers, crowded the neighbourhood of Whitehall, seeking for some relief for their distress. In February, 1663, they reminded his Majesty how they had repaired to him in Flanders from their services elsewhere abroad, in 1656, leaving advantageous employments. They would return, they said, to try for the aid of their friends in their own country, if they dared.

" But, notwithstanding their fidelity, they feared that ' if they returned to Ireland their arms would be taken from them, and they thrown into jail on pretence of their dangerousness.'

" To this petition they got only a verbal answer assuring them of his Majesty's care. They waited until they had pawned and sold all they had, even their very clothes and arms, to maintain themselves, and then applied again.

" They reminded his Majesty how they were broken in France, because they acted according to his Orders, and were made incapable of serving any foreign Prince, because of their constant adhering to and following his Majesty's fortunes ; yet, in their own country, were not trusted with, nor admitted into any employment, military or civil, whereby

they might be able to subsist ; that their estates were enjoyed by those who got them from the usurpers ; that they were run in debt for bread and clothes ; some were dead for want, others in prison for debt, the rest in a starving condition ; all expecting the same misfortune, ' unless your Majesty will, at last, effectually restore your Petitioners to their said estates, which the Earl of Orrery, at the Council Board in 1660 (Sir Audley Mervyn then being joint agent with him, and concurring with him), did, in your Majesty's presence, promise should be done in three months, whereas three years are expired.'

" The delay demanded by the Agents of the Convention, as they reminded the King, was ' to enable the possessors of their Estates to have a convenient time to remove themselves, their families, and stocks.' Meantime, whilst these possessors have increased their stocks, the Petitioners live in languishing and sad conditions, especially since they lost their employments in your Majesty's service, which was their only stock and livelihood.'

" They lingered in London on the business of their claims, until the passing of the Act of Explanation, in the year 1665, which made all petitioning vain. It is truly pitiable to trace their descent downwards to very beggary, and many of them (and those not the least fortunate) to death. To close their complainings which, perhaps, have become as wearisome here as they became to the King and his courtiers and councillors at Whitehall, their last petition follows in full :

" ' To the King's Most Excellent Majesty.

" ' The humble petition of the Officers who served under your Majesty's Royal Ensigns beyond the sea,

" ' Sheweth,

" ' That most of the Officers who served under your Royall Ensignes beyond Sea have perished by famine, since your Majesty's happy restoration, in soliciting for theire Estates, and the few of them that remain are now like to perish by the Plague, having not any means to bring them out of the Towne, nor knoweing whither they shall goe.

" ' Your Petitioners' humble request is that in regard they are but a few in number, and theire Estates but small, your

Majesty would be graciously pleased to put an end to their sufferings, by ordering that a proviso may be inserted in this bill to restore the Petitioners to their former Estates.

" ' Signed :

Major John Neale.
Capt. Daniel O'Keefe.
Capt. William Tuite.
Capt. Terence Byrne.
Capt. David Dannan.
Capt. Michael Brett.
Capt. William Stapleton.
Capt. Walter Butler.
Capt. Philip Barry.
Lieut. Richard Barry.
Lieut. John Fox.
Lieut. William Barry.
Lieut. Thomas Cusack.
Lieut. Henry Tuite.

Re-formed Officers.

Capt. Charles M'Carthy.
Col. P. Walsh.
Col. Richard Fitzgerald.
Col. Connor O'Driscol.' "

Most of the signatories were persons specifically named for reinstatement in Sections 25 and 28 of the Act of Settlement. Yet for them the law was of no avail. Its Irish Ministers preferred Regicides to loyal soldiers. Mr. Prendergast adds :

" The doors of Whitehall need now no longer be waited at. The Court of Claims, too, was virtually shut against them. Every gate of hope was closed. But return to Ireland they must, to rejoin their companions in misery, and add a fresh batch to the crowd of unfortunate anxious wretches that sued before the Commissioners of Claims, or hopelessly wandered near mansions and domains that had been their fathers' or their own.

" Yet such was the antique loyalty of Irish Officers, that in 1678, at the time of the disgraceful Popish plot in England, they again quitted their service under Louis XIV., at the

King's command, upon demand of the English House of Commons, and once more embraced poverty for his sake" (I.R.R., 37-42).

The careless bounty of the Merry Monarch to his father's murderers, therefore, makes sad contrast with the mercies meted out to the well-born soldiers who stood by him abroad through all the phases of his exile. In spite of the statutory guarantee that they would get back their lands in Sections 25 to 28 of the "Royal Declaration" which was embodied in the Act of Settlement, most of them were never reinstated. Their homes and properties were held against them by those who rebelled against the King for whom they fought and suffered.

On the other hand, so lavish were the grants to the Cromwellians, that, to undo what Sir A. Chichester would call a "filchery" of Clotworthy's Committee of Adventurers, Section 169 had to be introduced into the Act of Explanation in 1665. This comical provision (17 and 18 Charles II. c. 2) enacts:

"Whereas Thomas Cunningham and Captain Lewis Dick, in the year 1642, pretended to have performed acceptable services against the then rebels in Ireland, by hindering provision coming to them by sea, and by relieving the English garrisons which were in distress, wherein they so far gained belief as that they obtained from the treasurer for the Irish Adventurers an acknowledgment that they paid in £7,000 as money adventured, and for which they likewise had a certificate from the Committee of Adventurers sitting at Grocers' Hall in London; and howbeit the said Thomas Cunningham or Captain Lewis Dick never did any service on the coast of Ireland, according to the said undertaking, nor paid in any money, as other Adventurers did; yet by colour of the said certificate there were set out for the said £7,000 the number of 15,555 acres of land in the county of Tipperary and Limerick, whereof they, the said Thomas Cunningham and Captain Lewis Dick, or their assigns, were possessed the 7th May, 1659;

"Now, lest by the general rule of the present settlement the said number of acres, or two-third parts thereof so unduly

obtained as aforesaid, should be secured to the said Thomas Cunningham and Captain Lewis Dick, or their assigns, his Majesty is graciously pleased that it be enacted, and be it enacted by the authority aforesaid, that the said 15,555 acres so set out as aforesaid, for and on pretence of the said £7,000, shall be, remain, and continue, and are hereby vested in his Majesty, his heirs and successors, forever."

The Ormonde MSS. show that the "Committee of Adventurers in Grocers' Hall" petitioned the Lord Lieutenant, on 11th August, 1666, for redress for these worthies, but they took nothing by it (H. MS. C., 9).

Although the entire legislative and executive power remained with the Cromwellians after the Restoration in Ireland, it is significant that a man so powerful as Lord Massereene secured no clause in either the Act of Settlement or its supplement, the Act of Explanation, to validate his lease of Lough Neagh and the Bann. When other Patents of the Adventurers were legalised, this alone was not validated. Such a failure can hardly be attributed to forgetfulness. The fact was, that the Lessee dared not assert title in face of the Charter to the London Corporation, and of the flagrant flaw connected with the original acquisition of the grant.

CHAPTER XXXVI.

LORD DONEGALL'S DECEIT.

We must next trace Lord Donegall's devices to impose on Charles II. He quietly hatched a scheme to recapture the fisheries which outdistanced in cunning the wiles of his uncle. Massereene's success in partially compassing their acquisition served to nerve him to still more daring designs. Yet formidable obstacles stood in his way. Lord Donegall was not, like Lord Massereene, named as a Commissioner in the Bill of Settlement, nor did any provision therein apply to him. He was not an ally of those who dominated the Executive in Ireland, where the ex-Cromwellians had firmly entrenched themselves. Still he had a friend at Court in the Duke of Ormonde, who had been Viceroy to Charles I., and went into exile with Charles II.

So, after the ex-Cromwellians in 1661 returned to Dublin to give themselves a legislative title to their plunder, Lord Donegall remained in London. He was groping for a pretext to re-claim Lough Neagh and thought his best plan was to secure a grant of the reversion upon the expiration of the lease to Lord Massereene. As the humiliation of the Chichesters in 1640 was brought about by Strafford, he found it hard to explain how or why the Surrender had been forced on his father. Anything which questioned the work of the late Lord Lieutenant had to be tenderly handled. Strafford's memory was sacred to the Royalists, who regarded him as a martyr only one degree less venerable than Charles I. Lord Donegall, therefore, threw the blame for the deprivations of 1640 on Strafford's Deputy, Wandesforde. This appears from a King's Letter of 2nd October, 1662, which alleges

that: "when Wandesforde was Deputy, it was sought to force fresh Patents upon Lord Chichester, under colour of his having defective title. These Patents, which were never enrolled or paid for, shall be vacated, and new Patents for his estates shall be given to the Earl of Donegall" (S.P.I., 596).

The King's Letter was not acted upon, because, as already mentioned, before a new grant could be taken out, a clause in the Act of Settlement compelled the enrolment of the Patent of 1640.

Lord Donegall had to proceed warily with his scheme. Those whom he consulted in legal affairs doubtless advised that his "evidences" were faulty, and that the easiest course to success was to convince the King or his Ministers that the Surrender of 1640 was a voluntary act of loyalty to Charles I., for which no consideration had been received. As every written instrument belied this story, all awkward parchments bearing on it were withheld from the Throne.

The Orders of Composition of 1638 and 1639 placed him in a special difficulty, for they demonstrated that ample compensation was provided. But, after the late upheaval in government, who was to call attention to the documents of a bygone generation? By reason of non-enrolment the Patent of 1640 remained hidden from prying eyes, and this crafty expedient now held good. So, in the teeth of carefully-drawn recitals and of the Surrender and Patent, Lord Donegall put forward, in 1661, an ingenious set of fables to bolster up a new claim on the Crown.

His allegations were threefold. First, he pretended that Lough Neagh had been given back by his father to Charles I. to oblige the martyred monarch; or (as the phrase went) "to comply with the Royal occasions." Second, that a pension of £40 a year was then promised by the late King as compensation; and third, that this pension was never paid, and that all arrears were due. Such injustice, he argued, should be repaired by a gift of the reversion on the expiry of Lord Massereene's lease. This, of course, involved that he was to get, in compensation for the loss of his alleged pension,

the rent payable by Massereene to the Crown, viz. £40 for the first seven years and £50 thereafter.

That such proposals could even be broached by the Peer who retained every advantage, as to rent and title, gained by the Patent of 1640, showed the family hardihood.

The arrangement then made between Strafford and the Chichesters was set down in black and white. It was recorded in the Orders of Composition and other documents of the Commissioners for Defective Title which were still extant in 1661. The Surrender of 1640 was followed by a Patent, the terms of which could be referred to. The production of these records would have revealed the truth. They were, therefore, kept back from the King.

By this means Lord Donegall, three months after the issue of Massereene's lease, wormed out of the Throne a grant of the reversion of that Lease, which made him a present of the rent payable to the Crown thereunder. It was on the 28th February, 1660-1, his supplications were rewarded. A new King's Letter gratified him, and its terms supply the next link in the chain of proof as to the misconduct of the Chichesters against their Sovereigns. The Patent framed on it was as much a trick on Charles II. as Basil's Lease to Clotworthy was on Cromwell. It shows, however deceitfully it was obtained, that the King supposed it was confined to the Lough Neagh fishery, and did not extend to the Bann at all. The River was just about to be restored by the Crown to the City of London.

The Letter (incredible to relate) is grounded, as to the Bann, on a preamble reciting that the river had been given to Chichester in 1621, when in fact it was then in the possession of the Londoners under their Charter of 1613. It was addressed to Lord Chancellor Eustace and the Lords Justices —Coote and Boyle, and reads as follows :

" Charles, R.

" Right trusty and well-beloved Councillor, and right trusty and well-beloved cousins and Councillors, we greet you well.

" Whereas our Royal grandfather, King James, did, by his Letters Patent, dated the 20th day of November, 1621

(among divers other things) grant unto Arthur, Lord Chichester, his heirs and assigns forever, Lough Neagh, alias Lough Chichester, in these words :

" ' And also all the fishing and fishing-places, of what kind soever, in the lough or pool of Lough Neagh, alias Lough Sidney, alias Lough Chichester, and in the River of the Bann ; and in the soils of the said lough or pool of Lough Neagh, alias Lough Chichester, alias Lough Sidney, and of the River of Bann aforesaid, and every of them ; with their appurtenances, from the lough or pool aforesaid unto the rock or fall of water called the Salmon-Leap in the said River of the Bann, being in the counties of Down, Armagh, Tyrone, and Antrim, and in the county of Londonderry in Ulster, or some of them ; together also with certain the eel-weirs in and upon the said River of the Bann ; and also full power to come to the bank of the lough, pool and river aforesaid, within the bounds and limits aforesaid, and thereupon to lay and put their nets, and all other necessaries for fishing ; and to do all other things whatsoever which shall be needful and necessary to the enjoying of the premises.'

" And whereas Edward, Viscount Chichester, and his son Arthur, the now Earl of Donegall, according to his Majesty's Letter, dated the 24th September, 1638, did, *to comply with our late Royal father's occasions*, surrender the said Lough and fishing unto his said Majesty, and in consideration thereof was to have a grant passed unto himself, his said son, and their heirs, of one Annuity, Pension, or yearly Rent Charge of £40 per annum, with liberty to fish for their own provisions upon the said Lough, and with the eel-fishing at, in or near Toome.

" And whereas, finding John, Viscount Massereene, possessed of the premises, we have lately made a lease to him thereof, at the rent of £40 for the first seven years, and £50 for the remainder ; our will and pleasure is that, in consideration of the arrears of the said £40 per annum assured to the said Earl of Donegall and his father and their heirs, which have been unpaid for several years last past, and for other good causes us thereunto moving, the reversion of the said Lough, fishing and premises leased as aforesaid to the said

Viscount Massereene, be and shall be granted to the said Earl of Donegall and his heirs forever, together with the rent reserved to us on the said lease, being £40 per annum for the first seven years, and £50 per annum during the remainder of the said lease.

" And we do hereby will and require that you cause one or more effectual grant or grants of the reversion of the premises under our Great Seal of our Kingdom of Ireland to be passed by advice of our learned counsel there unto him, the said Earl of Donegall, and to his heirs forever, in as full and ample manner as the same were granted to the said Arthur, Lord Chichester, by our said Royal grandfather.

" And also one or more grant or grants under our said Great Seal unless the same may be effectually inserted in the grant of the said reversion of the said rent reserved unto us, being £40 per annum for the first seven years, and £50 per annum during the remainder of the lease aforesaid, to be paid unto him, the said Earl of Donegall, and his heirs.

" And our further pleasure is that our Barons of our Court of Exchequer in our said Kingdom and other our officers whom it may concern, do put the same out of charge. For all which, this shall be to you and to our said Barons, and to all others our officers whom it may concern, a sufficient warrant.

" Given at our Court at Whitehall, this 28th day of February, in the 13th year of our reign.

" By His Majesty's command,

" Will. Morice.

" To our right trusty and well-beloved Councillor, Sir Maurice Eustace, Knight, Chancellor of our Kingdom of Ireland ;

" And to our right trusty and right well-beloved cousins and Councillors, Roger, Earl of Orrery ;

" And Charles, Earl of Mountrath, Justices of our said Kingdom ;

" And to all other our chief Governor or Governors thereof that hereafter shall be."

(S.O.B., L.R.O., vol. iv. p. 287.)

That the King's advisers could be so ignorant as to allow Charles II. to be deceived by such pretences can be accounted for only by the confusions through which the State had passed, or the bribery which was then rampant.

Any preliminary inquiry would have shattered these falsehoods; but the officials in Ireland, who in ordinary times could have been asked for a report, had been scattered by the Regicides, and regular government was hardly restored. No Lord Deputy or Lord Lieutenant had arrived in Dublin; and to grant what was sought injured no influential personage, once Lord Massereene's petition had been met.

The deception practised on Charles II., however cynical, was crude enough. Fraud is seldom successful without some basis of fact on which it can lean, but here its foundations were of the flimsiest kind; and, unless the King's advisers were purblind or conniving, it could never have escaped detection. Let us analyse the devices by which the King was overreached—first, the pretext that compensation, in the shape of a pension of £40 a year, had been promised; next, that this promise had been left unfulfilled; and last, that no consideration was awarded by the Crown in exchange for the Surrender of 1640.

The word "pension" alone is not used in the letter of Charles I. dated 24th September, 1638, which embodies the Royal promise to the Chichesters. A £40 "annuity, pension, or yearly rent-charge" was spoken of. This was more than granted, for under the Order of Composition of the 14th September, 1639, the £40 was raised to £60. It was conferred and accepted in the shape of an abatement of the rent to be charged in Chichester's proposed new Patent under the first Order of Composition dated 7th December, 1638. The rent contemplated by the original Order must have exceeded £150 a year. It was reduced to £90 16s. 6d. by force of the second Order, and this reduction the Surrender of 1640 recognises and embodies. Thus Chichester, far from not getting the £40 a year promised by Charles I., received a larger benefit, viz. an allowance of £60 a year off the rent he was originally to have been charged, and at this abated figure he was given a Statutory confirmation of his vast estates. Yet in spite

of this boon and the additional advantage (to a holder with bad title) of the grant of an unassailable Patent, Lord Donegall pretended that the bargain of 1640 had been broken, and that a " pension " of £40 a year, for which he gave up Lough Neagh and the Bann, had been denied him. The figment that his family in 1640 had any title to the Fisheries need not again be exploded.

While it is clear that before sanctioning the Letter of 1661 the King was tricked into the belief that Chichester had received no consideration for the Surrender, it is equally plain that his Majesty did not then intend to grant the Bann to Chichester. The frame of four documents, viz. the King's Letters of 1620 and 1638, the Patent of 1640, and the final Letter of 1661, proves that the Crown did not regard him as having any claim on the river. Sometimes he was treated as enjoying a license for eel-fishings at Toome ; but, where a larger power to fish was given in 1625 it was conferred as a personal privilege, and not as a territorial right.

Great craft was therefore shown in the wording of the 1661 Letter. Only the " Lough and fishing " are spoken of as having been surrendered—the Bann is not mentioned. The recital of the reversion to Lord Donegall is merely " the Lough, fishing and premises," instead of a frank declaration that the river was included. Nor did the cunning of the draftsman end there. Clotworthy's lease demised two parcels, at separate rents : one rent for Lough Neagh, and a higher rent for the Bann. The Letter bulks the rents and parcels together, so as further to obscure the attempt to capture the river. More tricky conveyancing could not have been devised.

The reason for this blurring of fact was that the Londoners, being in possession of the Bann under Cromwell's Charter, were seeking a Royal confirmation of their title. This the King renewed to them a few months later. The new Charter, obtained in 1662 by the Corporation from Charles II., was the third in sixty years which granted the Bann to the City of London. Neither Lord Massereene nor Lord Donegall then or subsequently objected to it. If either could have pretended that the river was his by virtue of Patent or King's

Letter, the time to have protested arrived at least when the Charter of 1662 issued. No such protest was made.

The concealment and deception thus practised, involved not merely the capture of property not intended to be conveyed, but a subtraction of Crown revenue. For, in addition to the £60 abatement granted by Charles I. Lord Donegall got from Charles II. an additional £50 a year in the shape of Clotworthy's rent. Thus the sum of £110 a year (£60 plus £50) was lost to the King by the treachery of his self-seeking councillor. The net gain to the Crown from the Surrender of 1640, was thereby reduced to the value of some paltry tithes. On this basis, Strafford's masterpiece was indeed undone; and the crime suspected in 1618, exposed by the Barons of the Exchequer in 1623, and denounced from the Throne in 1626, became once more triumphant.

Even if arrears at the rate of £40 a year were due to Lord Donegall, he might have enforced payment by deducting the amount from his own Crown rent of £90 18s. 6d. There was of old a legal principle that "A set-off is no payment," and therefore the King's Letter of 1638 expressly provided that if it was not paid Chichester and his heirs might on such default, "take allowance out of their yearly rent." Yet it appears from the Receipt Book of the Clerk of the Pells that he paid a half-year's rent in full up to Michaelmas, 1660 (£45 3s. 3¼d.) on the 29th November, 1660. Had the Crown then owed him the arrears of a £40 rent-charge, such punctuality, and the failure to seek an abatement in his own rent would have been miraculous.

If the bargain connected with the Surrender of 1640 had not been fully embodied in the Patent of that year, Edward Lord Chichester would have obtained a separate Patent for the £40 rent-charge. As he raised no question in his lifetime, it is plain that the arrangement made in 1640 was that the promised "rent-charge" of £40 should merge in the annual rent under the new Patent, and this rent was reduced by £60 instead of £40.

In the Crown Rental for 1660 Lord Donegall is described as "tenant of the territory of Innishowen, with the fishery of the water of Lough Foyle." (This "fishery" appears

from other entries and from the Patent to have been a "ferry.") The parcels were :

Innishowen Territory with Lough Foyle "Fishery,"	£36	14	11
Manor of Dungannon,	18	14	6
Manor of Belfast,	32	1	8½
Castle Billetshall, Carrickfergus,	2	7	7½
Town of Ballinafeigh, Co. Down,	0	7	9
	£90	6	6

On foot of this a half-year's rent, £45 3s. 3d., is acknowledged (1C. 11D., 256, I.R.O.) from the nobleman who could have kept £40 of it in his pocket, if he had not already got a £60 allowance in lieu of it, under the Patent.

Had the payment been made under the Patents of 1621 (which reserved a rent of £87 19s. 11d.) the receipt would have shown a quite different amount (and one reduced to less than half the £87 19s. 11d. owing to the surrender of the tithes and fisheries). It is therefore evident that the payments of rent in 1660 and 1661 were made under the grant of 1640, in spite of its non-enrolment. A difference of ten shillings between the receipt of the Clerk of the Pells and the Rental of 1640 represents the rent of a Dublin water-mill, which he had not succeeded in robbing Lord Ormonde of, under the Wakeman frauds.

Such facts cumulatively establish the grossness of the tale palmed off on Charles II. The case against Lord Donegall as to the deception of the King, shortly marshalled, is :

1st, the suppression of the two Orders of Composition of 1638 and 1639 ;

2nd, the non-enrolment and non-production of the Patent of 1640 ;

3rd, the allegation that a £40 "pension" was promised by Charles I. ;

4th, the withholding of the fact that a £60 allowance in lieu thereof was conceded ;

5th, the pretence that the Surrender was voluntarily made to "comply with the Royal occasions" ;

6th, the payments of rent to the Crown without deducting the £40, in case it had not merged in the £60 allowed off the Patent-rent ;

7th, the conspiracy to deprive the Londoners of the Bann, in view of their Charters and the Royal promise ;

8th, the suppression of the Surrender of the Bann in 1611, and of the compensation then paid.

9th, the falsehood that " when Wandesford was Deputy it was sought to force fresh patents upon Lord Chichester, under color of his having defective title."

No legal principle is better settled than that, when the King is " deceived in his grant," the resulting Patent is a nullity. The law as regards fraud is the same for both Crown and subject. The King is entitled to receive from his Courts at least the same protection which they would give a rustic cozened by a horse coper.

" If the King is deceived in the consideration which he intended to have, the grant is void. In all cases where the considerations are real and savour of the land, or extend to such a real thing, if it be false it destroys the Patent " (V., v. xvii. p. 151).

The dye of disgrace is deeper in this business than in that engineered by Clotworthy against Cromwell. During the Commonwealth the State was in revolution ; confiscations were common, and loyalty to a ruler was hardly a canon of public creed. Clotworthy could proffer the excuse for his misdeeds that he cheated a mere abstraction—the " Commonwealth." Lord Donegall knew that he cheated the rightful King.

Having played the rogue he next attempted to screen his crime, and procuring a King's Letter for an omnibus Patent for all his estates, bottomed on the pretence that the 1640 grant was forced on him by Wandesforde. This plan utterly broke down. No new Patent was issued, in spite of the fact that in 1662 his friend the Duke of Ormonde, as Lord Lieutenant, held control of the Dublin machinery for working the Great Seal.

CHAPTER XXXVII.

A LAWLESS GRANT.

THE cozening of the King in 1661 had to be completed in Dublin, and thither Lord Donegall went. Charles II. never consciously granted or intended to grant him the River Bann. The next stage of his progress is, therefore, concerned with the method by which the cheat was carried out. The scene of action transfers itself from London to the Irish capital, where the consummation of the crime was witnessed.

Lord Donegall's arrival there can be easily fixed by two public records. He obtained a permit, on the 6th June, 1661, to ship six horses free of duty into Ireland (Tr.C., 251). On 25th June, 1661, he took his seat in the Irish House of Lords (L.M., pt. 7, p. 12). Within ten days of his vessel fetching the Irish coast, a Patent in his favour was sealed by the journeymen Justices who purported to act for Charles II. Dated the 3rd July, 1661, it is a sheerly illegal invasion of the limitations of the King's Letter. Lord Donegall's accomplices, without warrant or jurisdiction, imitating the example of the Cromwellian Basil, issued a Patent granting him not only Lough Neagh, but the Bann, and did so without any prior finding of "office."

The speed with which it was wrought into parchment deserves notice and comparison. In the preparation of the Patent to Clotworthy a month was consumed. The Charter of the City of London took three years to perfect. The job for Lord Donegall was done in ten days.

The river was then in course of re-grant by the King to the City of London, and Charles II. no more realised than did Cromwell that it was being filched away by Dublin

scrivenery. Stealthily to take or make such a grant was not only disloyal to the Crown, but, from the point of view of British policy, was an act of baseness against the merchants of the Plantation.

Yet the officials in Dublin did not scruple to follow the roguish precedent set, five years before, as to Clotworthy's lease by Cromwell's Attorney-General. Patterned on that unhallowed script Lord Donegall's Patent runs :

. . . " in consideration of the arrears of the said forty pounds per annum assured to the said Earl of Donegall and his father and their heirs, which hath been unpayed for several years last past, and for other good causes and considerations us thereunto moving, of our special grace, certain knowledge, and mere motion, by and with the advice and consent of our right trusty and well-beloved Councillor, Sir Maurice Eustace, Knight, Chancellor of our said Kingdom of Ireland, and of our right trusty and well-beloved cousins and Councillors, Roger Earl of Orrery and Charles Earl of Mountrath, our Lords Justices and Governors of our said Kingdom of Ireland, and *according to the tenor and effect of our letters bearing date at our Court at Whitehall the eight-and-twentieth day of February in the* 13*th year of our reign*, and now enrolled in the Rolls of our High Court of Chancery in our said Kingdom of Ireland, have given, granted, and confirmed, etc., unto the said Arthur Earl of Donegall, his heirs and assigns, all the said fishings and fishing places of what kind soever in the said lough or pool of Lough Neagh and Tome, alias Lough Sidney, alias Lough Chichester aforesaid, *and in the River of the Bann*, and also all the islands in the said Lough, *and the soils of the said lough* or pool of Lough Neagh and Tome, alias Lough Sidney, alias Lough Chichester, *and of the said River of Bann, and every and either of them.*

" With all and singular their and every of their appurtenances, from the lough or pool aforesaid unto the rock or fall of water called the Salmon-Leap, in the said river, being in the counties of Down, Armagh, Tyrone, Antrim, and of the county of Londonderry in our province of Ulster in our said Kingdom of Ireland aforesaid, or in some of them, or in the confines of them or some of them.

" Together also with certain the eel weirs in and upon the said River of the Bann in the said counties or some of them. And also full power to come to the banks of the lough, pool, and river aforesaid, within the bounds and limits aforesaid, and thereupon to lay and put their nets and all other necessaries for fishing and to do all other things whatsoever which shall be needful and necessary to the enjoying of the premises and every part and parcel thereof, in as full and ample manner and form to all intents and purposes as the said premises were granted or mentioned or intended to be granted by our said Royal grandfather King James unto the said Arthur Lord Chichester.

" And also all rents whatsoever, reserved, due, or payable out of the premises or any part thereof upon any Lease or Leases heretofore made by us of the same premises unto the said John Lord Viscount Massereene, and the reversion and reversions, remainder and remainders, of all and singular the premises and every part and parcel therof. To hold, occupy, possess and enjoy. . . . unto the said Arthur, Earl of Donegall, his heirs and assigns, for ever to the only use, benefit and behoof of him, etc., for evermore.

" And further :

" In pursuance of our said Letters we do give, grant, and confirm unto the said Arthur Earl of Donegall, his heirs and assigns, the said several yearly rents reserved or mentioned to be reserved unto us, our heirs and successors, upon the said Lease made by us to the said Viscount Massereene of all and singular the said premises, being £40 per annum for the first seven years of the said Lease and £50 per annum during the remainder of the term of the said Lease etc " (C.P.R., 13 Chas. II.).

Lord Donegall, immediately after his arrival in Dublin, and before his Patent was made out, paid the Crown a half-year's rent (29th June, 1661) under the Patent of 1640, without seeking deduction for his " £40 pension."

His grant did not even follow the words of the lease to Clotworthy. That was in the terms following :

" All the lough called Lough Neagh and Tome, together with the fishings and soil thereof and the islands in the said

lough, called Ram Island and the other Coney Island, containing three acres of ground. And also the Lough and River of Bann, as far as the Salmon-Leap, containing six salmon fishings and two mixed fishings of salmon and eels and one of eels and another trouts, which said lough borders upon the counties of Down, Antrim, Londonderry, Tyrone, and Armagh, in the province of Ulster."

Thus the bed and soil of the Bann were not demised to Clotworthy. Just as Cromwell's unconsciousness of any intention to give him the river is proved by his conveyance of the Bann to the Londoners immediately after, so did a genuine grant to them of the river by Charles II. follow within nine months of the lawless Patent to Lord Donegall. The City petitioned for a Royal Charter after the Restoration, and this was issued under the Great Seal on the 10th April, 1662. In it the grant of the entire Bann, from Lough Neagh to the sea, as made by James I. and renewed by Cromwell, is repeated. Such facts clinch the case (otherwise complete enough) that neither Charles II. nor Cromwell knew or approved of the diversion of the river, by surreptitious Patents issued by underlings to outsiders.

The Donegall Patent also departs from, and exceeds, the King's Letter in a vital respect. There was nothing in the Royal Letter dispensing with the finding of " office," yet it contains a plenary *non obstante* to override the statute. The law declared that a Patent made without " office found " should be " void and holden for none," but the Patent of 1661 was issued without any Inquisition (O'N. *v.* J., 202).

The failure to hold " office " was not an omission which could be supplied otherwise or afterwards. Its seriousness was attested by the years of litigation, and the enormous expense to which the non-holding of it subjected the public and the Londoners. As regards the " natives," they were placed on the same footing as Englishmen before the law. Half a century earlier, the Act of 11-13 James I. c. 5 extended to all Irishmen the privileges of British citizenship. Could hundreds of fishermen thus held law-worthy be robbed of their living by a parchment conceived in fraud and issued in the teeth of Statute ?

Coote and Boyle, as Lords Justices, were not entitled to abolish the law of the land. The Lord Chancellor, Eustace, was joined to them as an additional Lord Justice, and the powers conferred on the trio by the King are set out in their Commission. No Lord Lieutenant or Deputy had arrived in Ireland since the Restoration. Charles II. (as already mentioned) had appointed the Duke of Albemarle and Lord Robartes to these posts in June, 1660, but neither took up his appointment (L.M., pt. 2, p. 8).

The Duke of Ormonde did not become Lord Lieutenant until the 8th November, 1661, four months after the issue of the Patent (C.O., v. ii. p. 237). Even if the King at that date could, by himself or by a Viceroy, have dispensed from or suspended Acts of Parliament, in matters affecting real property and the holding of "office" (to enquire whether the Crown possessed title to make the grant suggested by a King's Letter), he conferred no such jurisdiction on the Lords Justices.

The failure to hold "office" if only because of the claim of the Londoners to the Bann is vital to be considered in determining the validity of the Patent. It is perhaps desirable also to examine the extent and limitations of the functions of Irish Lords Justices, as defined by their own Commission. This Commission issued on the 31st December, 1660, and was enrolled 3rd January, 1660-1. Their authority depended on its words, and it, of course, conferred on them no power to abolish Acts of Parliament. The Commission ran :

"Charles R.,

"Whereas our affairs in Ireland are at present, and for some years past have been, much discomposed and out of frame and order, and for want of settlement of our Government there, which, for these late years hath been discontinued, whereby disaffected and licentious persons had and have taken the boldness and liberty to themselves to follow licentious and unwarrantable courses, to the great disturbance and distractions of Church and Commonwealth, and thereby break the bond of all laws both divine and humane,

"Now know all men by these presents that we, taking notice of the great experience, dexterity, prudence and circumspection of you, our right trusty and right well-beloved Sir Maurice Eustace, Knight, Lord Chancellor of our said Kingdom of Ireland, Roger, Earl of Orrery, and Charles, Earl of Mountrath, and reposing special trust and confidence in your fidelity to us, have of our special grace, certain knowledge and mere motion, given, granted, and committed, and by these presents do give, grant, and commit unto you, our said Lord Chancellor, Roger, Earl of Orrery, and Charles, Earl of Mountrath, the office of Lords Justices and Governors of that our Kingdom of Ireland, giving you jointly full power and authority to keep and govern our said Kingdom of Ireland, and all our people there, and to act all and every thing as to the said office of Lords Justices doth appertain.

"And we do by these presents constitute and appoint you to be our Lords Justices and Governors of our said Kingdom of Ireland in manner aforesaid, for and during our pleasure; together with the like authorities, jurisdictions, preheminences, and dignities, to all intents and purposes, which to the said office of Lords Justices and Governors of our said Kingdom of Ireland by the laws and customs appertain in such manner and form as any Justices and Governors of the said Kingdom of Ireland, the said office in former times have enjoyed, occupied, and exercise" (S.P.I., 149).

Then follows a provision of £1,500 "a piece" for all three, notwithstanding that only two Lords Justices were previously appointed.

That is all. Some further instructions which they received are mentioned by Cox (P. 2, p. 275), but these did not enlarge their powers. (See also Carte, v. ii. p. 212). Unless, therefore, the public are ciphers, and the law a stumbling-block, these three gentlemen had no right to treat Acts of Parliament as Cromwell's Attorney-General Basil did in a time of revolution and insert *non obstantes* as words "of course" depriving the King's subjects of their elementary rights.

The law officers of the day, who should have advised them as to their duty, were Sir William Domville, Attorney-General, and Sir John Temple, Solicitor-General. They

doubtless knew that when the King wished a *non obstante* to be inserted in a Patent, the fact was mentioned in the Royal Letters authorising the grant. Instances of such authorisations in Stuart reigns are plentiful. They were given by Letter of James I. to Chichester, 17th October, 1615, to enable the Deputy to sanction the tanning of leather, " with a clause of *non obstante* the Statute of Elizabeth " (S.P.I., 94). On the 25th May, 1618, the tanning licence was issued with a *non obstante* inserted (S.P.I., 197). A Letter of Charles I., of 12th July, 1627, orders ecclesiastical lands to be granted to the Bishop of Limerick " with a clause of *non obstante* the Statute of Mortmain." A Royal Letter, 30th August, 1627, authorising a grant of forfeited lands to the same Bishop, declares " on all grants passed in virtue of this, there shall be a *non obstante* of the Statute of Mortmain " (S.P.I., 266). Another Letter of Charles I., 25th August, 1630, orders a grant to Trinity College in which " there shall be a *non obstante* to the Statute of Mortmain and other *non obstante* usual in Letters Patent " (S.P.I., 569).

Why then should three temporary Lords Justices have inserted a *non obstante* in the Donegall Patent without Royal licence ? To destroy the right of riparian owners in Lough Neagh (not to speak of public right) was no light matter. To filch the King's fishery, or that of the Londoners, in the Bann, without enquiry, was even more audacious.

The Londoners, having been put in possession of the Bann by Cromwell, were entitled to retain it under the " Royal Declaration " as well as by the promises of Charles I. and the Charter of James I. They, at least, should have had notice of the adverse grant by the machinery of a public Inquisition. Even the Patent for a village fair would not be granted by the Crown in England without prior writ of enquiry *ad quod damnum.*

Thus it was not merely natives who were despoiled by such highhandedness, but the greatest English Corporation.

As to hundreds of men dwelling on the shores of Lough Neagh, to use Lord Antrim's words to Cecil in 1608, " the stay of their living " depended on the fishery. That local rights existed is put beyond question by the fact that Queen

Elizabeth's Deputy required a chieftain of the O'Neills, before catching salmon, "to make agreement with the fishermen according to the custom of the Bann." The "conditions for fishing the Bann" were noted by the Government in the Red Council Book of 1541. The ascertainment of the rights of Churchmen in the river with a view to the non-confiscation of the property of the Establishment also created a special necessity for the holding of "office." All these considerations were overborne by the Lords Justices. The law as to finding of "office" before grant, was (and remains) in full vigour. A subsequent Irish Statute of 1698 (10 William III. c. 10) even extended the right of traverse in respect of the finding of "offices" to cases in which it did not previously exist.

Besides at this time other "offices" were ordered. On 13th July, 1661, a Commission of Inquisition issued for lands in Co. Longford, given by his Majesty to his footman, John Farrel (L.M., pt. 4, p. 151). Why then was "office" not held for Lord Donegall on July 3rd, except to cloak fraud ?

Nor have any of the Acts concerning "office" been repealed, though the change in the exercise of Royal authority has now made Inquisitions rare.

As recently as 1865 and 1887 Acts were passed (28 and 29 V. c. 104, s. 52, and 50 and 51 V. c. 53) regulating the finding of "office." To-day it remains a vital and subsisting legal process. Indeed Inquisitions were held so late as 1836 in Dublin and Limerick, with juries duly impanelled, to investigate questions affecting property, before it was taken by the Crown (H.A.C.R., 71-4). In 1661, when confiscation was of daily occurrence, the law was well known to everyone. Even the Parliament which James II. assembled in Dublin after William and Mary assumed the Crown of England was careful to insert a *non obstante* dispensing with the Act 18 Henry VI. when restoring to native proprietors the lands from which they had been expelled by Cromwell.[1] When the Irish Williamites got the upper hand, they took the same precaution on giving statu-

[1] This rarely-to-be-found Statute was printed as a pamphlet in 1690 by R. Clavell & J. Watts, London. The *non obstante* is at page 57.

tory recognition to the breach of the Treaty of Limerick. The Act of William III. which provides that the lands of Papists should vest in the King without "office found" is the last general Irish Statute in which that formula was employed. But in 1798, by a special Act, when Lord Edward Fitzgerald was attainted for rebellion, with Bagenal Harvey and Cornelius Grogan, the confiscation of their estates was accompanied by a Statutory dispensation from the finding of "office," viz. "their property shall stand forfeited to his Majesty . . . without any Inquisition or Office hereafter, to be taken or found" (38 G. III. (I.), c. 77, s. 1).

That the Sovereign himself enjoyed the unrestricted power of dispensing with "office" was not conceived by legal authorities. "The King can only dispense by *non obstantes* for his own benefit" (V., vol. xvii. p. 60). Could three temporary officials exempt a subject from statutory requirements in 1661 with sinister purpose? The oath of investiture taken by Lords Justices is repugnant to the dispensation they unwarrantably gave. That oath has remained practically the same for centuries, and bound them to execute their powers according to law, viz. :

"Ye shall faithfully and truly, to your power, serve our Sovereign Lord the King, in the room and authority of Lord Justice and Governor of this his Grace's realm of Ireland, and in especially ye shall maintain and defend the laws of God and the Christian faith ; and, as far as the King's laws do or shall permit, the usages, rites, ceremonies, and liberties of Holy Church.

"And ye shall, likewise, to your power, not only keep the King's peace among his people, but also maintain the King's officers and ministers in the execution and administration of justice, and defend the King's garrisons, castles, dominions, people, and subjects of this same realm, and repress the King's rebels and enemies.

"Ye shall not *consent to the damage or disherison of the King*, his heirs or successors ; neither ye shall not suffer the rights of the Crown to be destroyed by any way, but ye shall let it to your power ; and, if you cannot let the same, ye shall certify the King clearly and expressedly thereof.

" Further, ye shall give your true and faithful counsel for the King's profit, and the King's counsel ye shall conceal and keep ; and all other things for the preservation of this his realm of Ireland, and the peace among his people, and execution of justice according to his Grace's laws, usages, and customs of this realm, ye shall perform and do to your power.

" So God you help, all Saints and Holy Evangelists " (M., 189-190).

The oath of a twentieth century Lord Justice is practically the same, and contains the words :

" You shall not consent to the damage and disherison of Majesty, his heirs or successors ; neither shall you suffer the right of the Crown to be destroyed by any way, but shall let it to your power ; and, if you cannot let the same, you shall certify his Majesty clearly and expressly thereof."

It was in breach of such sacred formula that Eustace, Boyle, and Coote acted when they dispensed with the finding of Office to convenience Lord Donegall, and circumvent the Londoners. Their connivance prevented the exposure of the fraud, which gave him a paper title not only to Lough Neagh, but to the Bann.

In the absence of either Statutory or Kingly authority to dispense with the due finding of " office," on what footing stands the grant of the reversion to Lord Donegall of the lease to Clotworthy ? Failing any Royal warrant for the donation of the Bann, what validity attaches to his Patent for the river ? There had not been " office " for Clotworthy's lease, under either Cromwell or Charles II., so that the same invalidity attaches to both the lease and the grant of the reversion.

The practical test both as to the law and the commonsense of the position in 1661 is the consideration that, if there had been an Inquisition, the crime as to the Bann would have been detected. The entire grant, from its inception, technically considered, was void and should have been " holden for none." Technicality aside, it was obtained by malpractice so glaring that the lapse of centuries cannot screen the chicane. Lord Donegall succeeded in extracting the Letter from Charles II. by a gross deception of his Sovereign,

within a few months of the King's return from exile, and while Ireland was deprived of regular executive government. Having got the Letter by one kind of iniquity, he proceeded to graft a second enormity upon it. Conceived in deceit, the King's missive was employed to rob the Royal demesne under a Patent burlesquing kingly authority issued by make-shift Deputies, who shirked the holding of "office."

The "Coke" memorandum inscribed on the Wicklow Inquisition into Wakeman's Patents in 1636 (p. 244), declares that the mere absence of "office" renders Royal grants "clearly void." What gives this opinion peculiar value is, that Coke did not hesitate to accept a fresh grant of these lands for himself, although Wakeman's assigns purchased them for cash.

In the House of Lords, in 1878, Lord Blackburn pointed out this grave flaw in the title. Mr. Justice Ross in 1908 encountered his judgment in this wise: "Lord Blackburn observed that this lease contained a clause purporting to be a dispensation from the Statute of Henry VI., and inferred that there was not any 'office found'; but I have found this clause in many similar documents of the time, and it appears to be *a common form, and not a statement of fact.*"

In other words, Lord Blackburn considered that, when a Patent contains a *non obstante* clause as to "office" not being found, it is evidence that "office" has not been found. Mr. Justice Ross construes it to mean that "office" has been found, but that the Donegall draftsman, overpowered by a fondness for form, insisted on making his Patent look less plausible by numerous "notwithstandings." Assistance may be derived from contemporary evidence as to which of these opinions is the more probable.

The Irish Inquisitions of the seventeenth and eighteenth centuries are the root of title to much confiscated property, and were, therefore, collected by Royal order ninety years ago and published at the expense of Parliament. No anti-quarian or archaeological purpose actuated this research. Those who promoted it were concerned with the ownership of land and spared no expense in collecting evidence of title. That evidence had for centuries been jealously preserved.

The Gael did not alien their territories like African chiefs, whose concessions are munimented by chartered companies. The invaders, therefore, drove them into rebellion, in order to facilitate confiscation, and made every acre so acquired matter of record. These records take the shape of Inquisitions of " office " found by juries.

Shortly after the Union of 1800, the Government collected these Inquisitions and published them in 1826 and 1829 after a long and careful investigation by a Royal Commission. Nowhere can any findings as to either the Bann or Lough Neagh be discovered, except four, viz. Antrim, 1605; Limavady, 1609; Derry and Carrickfergus, 1621. Did they exist the Inquisitions could be as easily traced to-day as would a writ issued yesterday. Inquisitions of a much earlier period than that of Charles II. are extant; and if " office " had been held, the " return " would not have disappeared, nor the entries relating to it have perished.

Indeed, the date of Lord Donegall's arrival in Dublin with the King's Letter, and the haste with which the Patent was issued thereafter, would alone make it clear that no Commission sped for an Inquisition, as a " return " could not have been made in those days from remote counties like Antrim and Derry before the Patent was sealed. Notice of the inquiry would have had to be given in the localities interested, and the Londoners would have flamed into protest. Lord Blackburn's view, therefore, was as sound in fact as it is impregnable in law, and the answer to his objection crumbles away under analysis.

CHAPTER XXXVIII.

THE SEQUENCE OF DATES.

It may help to a clearer appreciation of the narrative to set down the principal dates in order, according to the modern calendar.

In the foregoing pages, the difference between the calendars then and now in force, is preserved. When citing authorities, however, it is not always possible to ascertain whether the old or the new style was followed. One well-known compiler gives the date of the Earl of Devonshire's death as the 3rd April, 1605, instead of 1606, forgetting that the New Year then began on the 25th March.

Other mistaken assignments of dates in the careers of Sir John Davies and James Hamilton were probably due to the printer—the type of the figure "9" being turned upside down, and converted into "6," or *vice versa*.

Carlyle remarks on the perplexities caused by the changes in the calendar:

"The English year in those times did not begin till March; New Year's Day was the 25th of March. So in England, at that time, in all records, writings and books; as indeed in official records it continued so till 1752. In Scotland it was already not so; the year began with January there, ever since 1600; as in all Catholic countries it had done ever since the Papal alteration of the Style in 1582; and as in most Protestant countries, excepting England, it soon after that began to do. Scotland in respect of the day of the month, still followed the Old Style.

"New Year's Day the 25th of March; this is the whole compass of the fact with which a reader in those old books

has, not without more difficulty than he expects, to familiarise himself. It has occasioned more misdatings and consequent confusions to modern editorial persons than any other as simple circumstance. . . . We of course translate into the modern year, but leaving the day of the month as we find it ; and if for greater assurance both forms be written down, as for instance 1603-4, the last figure is always the modern one ; 1603-4 means 1604 for our calendar " (C.C.).

The table here presented enables the progress of events to be readily traced. A glance at it dissipates the theory that any escheat had become operative in O'Neill's territory when the first Patents of the Bann and Lough Neagh were issued in 1606. The only land or water which then vested in the Crown in Ulster was that belonging to the Monks. No other legal confiscations of importance had taken place. Until the close of the war of 1603, the Acts of Henry VIII. affecting the Monasteries remained practically a dead letter in the North. They were, of course, uninforceable while Ulster remained unsubdued.

The Antrim Inquisition of 1605, where Lough Neagh is mentioned, was Monastic. Chichester never pretended that an Inquisition into the property of Religious houses justified a grant of waters which the Monks did not own. His plan was to get his defective assignments made good by Act of Parliament. Baffled in this, the " Return " of the " office " at Antrim was suppressed until 1684. Not only was it for seventy-nine years withheld, but the Commission to authorise it was defaced and rendered illegible to hide the fact that it related to Monastery lands. A Patent founded on such an Inquisition should, of course, only deal with the property of the Monks. Worst of all, the Commission was authorised by no King's Letter. The allegation that this Monastery " office " warranted a Patent for Lough Neagh and the Bann was not made for 300 years. It took its rise for the first time when an excuse had to be found for reversing the decision of the House of Lords in 1878. As Royal authority must be the essence and foundation for all Commissions Lord Cairns, Lord Hatherley, and Lord Blackburn then asked: " How did Lough Neagh become the King's ? " In 1907-11

the lame response came: "Through the Antrim finding." Even this only evinced title at most to half of the Claneboy part of the Lough. So judicial fancy in 1911 bred a "missing Inquisition" for the remainder.[1]

The relevant dates in the chain of history are:

Con O'Neill accepts Earldom of Tyrone from Henry VIII.	1st October, 1542.
Shane O'Neill slain	June, 1567.
Elizabeth annexes Tyrone by Irish Act,	1569.
Accession of James I.	24th March, 1603.
Submission of Hugh O'Neill	24th March, 1603.
Deputy Mountjoy (Earl of Devonshire) leaves Ireland	26th May, 1603.
Sir Randal MacDonnell granted "fourth" of tidal Bann	28th May, 1603.
Chichester made Governor of Lough Neagh, etc., with Belfast estate	8th August, 1603.
King's Letter re-grant to O'Neill	23rd Aug. and 1st Sept. 1603.
King's Letter grants Devonshire's trustee, John Wakeman, £100 a year	8th November, 1603.
Sir John Davies arrives in Ireland as Solicitor-General	20th November, 1603.
Chichester's amended grant (Belfast, etc.)	29th December, 1603.
Wakeman's Patent (St. Mary's Abbey)	28th February, 1604.
Wakeman's second Patent (Meath, West-meath, and Kilkenny)	5th March, 1604.
Chichester "Admiral" Lough Neagh	9th May, 1604.
Chichester appointed Lord Deputy	15th October, 1604.
King's Letter grants Thomas Irelande £100 a year	6th December, 1604.
Chichester sworn Lord Deputy	24th February, 1605.
Thomas Irelande assigns his rights to James Hamilton	26th February, 1605.
Chichester's partnership with Hamilton	June, 1605.
Inquisition at Antrim as to Monasteries, etc., near Lough Neagh	12th July, 1605.
Hamilton granted Coleraine Priory, with Bann "tithe" fishing, etc., under Thomas Irelande's Letter	20th July, 1605.
Hamilton assigns Coleraine Priory, with Bann "tithe" fishing to Phillips	23rd September, 1605.

[1] When eighty years ago the Government engaged the learned John O'Donovan on the Ordnance Survey he noted that the Act 11 Eliz. could not affect O'Cahan's country. (O.S. 196.)

Wakeman's power-of-attorney to Secretary Cooke and Auditor Ware	21st October, 1605.
Hamilton's Patent of one-third of Sir Con O'Neill's estate	5th November, 1605.
Hamilton's Patent of Lough Neagh and non-tidal Bann, etc., under Thomas Irelande's Letter	14th February, 1606.
Auditor Ware, as Wakeman's assignee, granted tidal Bann	2nd March, 1606.
Auditor Ware assigns tidal Bann to Hamilton	3rd March, 1606.
Hamilton's Patent of Trim, etc., under Thomas Irelande's Letter	13th March, 1606.
Hamilton's Patent of Westmeath lands, etc., under Thomas Irelande's Letter	17th March, 1606.
Earl of Devonshire dies (his will dated 2nd April, 1606)	3rd April, 1606.
Hamilton assigns Thomas Irelande's grants, with Lough Neagh and non-tidal Bann, to Chichester	10th April, 1606.
Hamilton's Patent of customs of Antrim and Down, under Wakeman Letter	11th April, 1606.
Shane MacBrian O'Neill's Patent of lands adjoining Lough Neagh and Bann	12th May, 1606.
Hamilton assigns "fourth" of tidal Bann to Chichester	14th May, 1606.
Hamilton granted Westmeath and Longford lands under Wakeman Letter	18th May, 1606.
Sir John Davies promoted Attorney-General	29th May, 1606.
Chichester's decision against Hugh O'Neill as to Bann	June, 1607.
Flight of the Earls (O'Neill and O'Donnell)	14th September, 1607.
Hamilton's Patent of Wexford lands under Thomas Irelande's Letter	13th May, 1608.
Sir Cahir O'Doherty's Rebellion	May–June, 1608.
Sir Arthur Bassett receives Patent of lands and fisheries conveyed to Chichester by Hamilton	1st July, 1608.
Bassett re-assigns lands and fisheries to Chichester	23rd January, 1609.
Chichester granted O'Doherty's estate, Innishowen	30th July, 1609.
Limavady Inquisition "finds" Bann for Chichester	30th August, 1609.

Londoners' Ulster grant including Bann and Lough Foyle	28th January, 1610.
Hamilton's additional Patent of St. Mary's Abbey	23rd February, 1610.
Hamilton receives £4,500 "compensation" for Bann and Lough Foyle	June, 1610.
Chichester annuls Sir Randal MacDonnell's grant "fourth" tidal Bann	November, 1610.
Chichester "surrenders" Bann and Lough Foyle	3rd April, 1611.
Village Corporations created to ensure a Planter Parliament	1612–13.
Londoners' Ulster Charter sealed	29th March, 1613.
Planters' Parliament meets	18th May, 1613.
"Recusants'" Protest to King James	July, 1613.
Chichester created a peer	25th February, 1614.
Act 13 James I. escheats Earl's estates	1615.
Planters' Parliament dissolved	24th October, 1615.
Chichester dismissed from Deputyship	27th November, 1615.
Chichester appointed Lord High Treasurer	2nd July, 1616.
Crown Rental describes Bann as Chichester's	1618-19.
Deputy St. John commanded investigate Wakeman-Irelande Patents	October, 1618.
Archbishop Jones (Lord Chancellor) dies	10th April, 1619.
Davies resigns Attorney-Generalship	30th October, 1619.
King's Letter for omnibus Patent to Chichester	8th August, 1620.
Derry Inquisition "finds" Bann for Londoners	26th March, 1621.
Carrickfergus Inquisition "finds" Bann and Lough Neagh for Chichester	6th April, 1621.
Chichester Ambassador to Palatinate	January, 1622.
Chichester leases Lough Neagh in fee farm to Londoners	1622.
Wakeman Patents condemned by Exchequer Barons	1623.
Chichester dies in London	19th February, 1625.
James I. dies	27th March, 1625.
Sir A. Forbes' fishery "discoveries"	21st October, 1628.
Opinion of Judge Oglethorpe against Wakeman Patents	26th April, 1630.
Strafford arrives as Lord-Lieutenant	3rd July, 1633.
Londoners' estate, including Bann, seized by Charles I.	1635.

Wicklow Inquisition condemns Wakeman Patents	21st April, 1636.
King's Letter accepts surrender of Lough Neagh from Edward Chichester	25th September, 1638.
Edward Chichester's Composition on surrender of Lough Neagh	7th December, 1638.
Edward Chichester's amended Composition	19th September, 1639.
Edward Chichester's Deed of Surrender of Lough Neagh and Bann	1st July, 1640.
Cromwell authorises 99 years' lease of Lough Neagh to Clotworthy	13th May, 1656.
Bann wrongfully inserted in Clotworthy's lease	14th August, 1656.
Cromwell restores Bann to Londoners	24th March, 1657.
Charles II. confirms Cromwell's lease to Clotworthy	15th November, 1660.
Charles II. grants reversion of Clotworthy's lease to Lord Donegall	28th February, 1661.
Lord Donegall's Patent	3rd July, 1661.
Charles II. restores Bann to Londoners	10th April, 1662.
Clotworthy's lease expires	14th August, 1755.

During the ninety-nine years of the Clotworthy Lease the records are a blank except for the reference quoted at page 258. That Lord Massereene or his heirs ever exercised dominion over Lough Neagh is not pretended. As to the Bann his possession is negatived, for he rented the river from the Londoners (p. 399). If he had paid Lord Donegall rent, proof would have been forthcoming. The will of Lord Donegall, dated 17th March, 1674, contains no demise of or allusion to either the rent or the fishings (H.B., 718).

Many letters of the second Lord Massereene are extant in the Ormonde Papers and in Lady Newdegate's *Puritan and Cavalier*, but they too are silent on the subject. The shady grant was evidently not asserted in the epoch when its origin could have been easily challenged.

CHAPTER XXXIX.

THE GOOD OLD TIMES.

The misconduct of the Chichesters, Clotworthys, and others seems impossible to those who would judge the men of the seventeenth century by the standards of to-day. The history of that time, however, shows that acts of turpitude in State affairs were an everyday business. We can breathe again the atmosphere of the period in citations which exhale the spirit of the age.

Bacon was Lord Chancellor of England when Chichester was Deputy for Ireland, and the epoch which witnessed the earliest of the fishery frauds saw "the wisest, brightest, meanest of mankind" impeached for corruption in his office, and abjectly pleading "guilty" after renouncing defence.

Of another great legist of that time—Lord Coke—Hepworth Dixon says: "He darkened his fame as a jurist and a judge by stooping, on the King's demands, to alter his Law Reports—a confession of guilt, if his cases are false—a dishonest compliance if he believes them to be true" (F.B., 224).

Such were the legal ornaments of the reign of James I. What of the King himself? "In that age, murder as well as forgery of handwriting was an art as carefully studied as the professions of law and physic. . . . James I. revived in the Palace of Whitehall the infamies of the Louvre, the horrible crimes, as well as the revolting vices" (B.C.E., vol. ii. pp. 12-14).

The Statutes and ordinances of the Tudors and Stuarts teem with relation of the frauds and forgeries of officers of

State. The Act 1st Henry VIII. c. 8 (English) has this preamble: "Forasmuch as divers of the King's subjects lately have been sore hurt, troubled, and disherited by the Escheators and Commissioners causing untrue 'offices' to be found, and sometimes returning into the Courts of Record Offices and Inquisitions that were never found, and sometimes changing the matter of the 'offices' that were truly found, to the great hurt, trouble, and disherison of the King's true subjects"; etc.

The Irish Act of Pardons (1613-15), 13th James I. c. 9, sec. 6, excepts from the King's mercy "All false forging and counterfeiting of any commission or commissions to inquire of any lands, tenements, or hereditaments, and also all false forging and counterfeiting of any untrue certificate, or return of any commission or commissions obtained or gotten of any court or courts, to inquire of any lands, tenements, or other things whatsoever, and all manner of falsifying of any particular, or of any Bill or Bills signed by his Majesty, after the engrossing thereof, and before the passing of the same under the Great Seal."

The fact that it was thus thought necessary to legislate in Ireland against the falsification of Statutes signed by the King, before their engrossment and enrolment in Chancery, exhibits a strangely distempered State. The wicked natives had, at least, no access to these parchments.

The Roll of Parliament itself was sometimes stolen by its keepers. The 33rd Henry VIII. c. 2 (1543) Irish, speaking of a Statute of the previous reign, says: "The rowle or record of which Parliament, by some sinister means, was embezzled, and by no means now can be found."

A Master of the Rolls was sent to the Tower in Tudor times for stealing Irish State Papers.

A Petition of the Countess Dowager of Sussex (about 1569), addressed to Queen Elizabeth, shows that the English nobility suffered as well as the "natives" . . . "She had been a suitor to the Queen for justice, in redress of manifold wrongs, which of late she had received in Ireland, from one Baron Cusak, an officer of her Highness's Treasury, who procured a false 'office' to be found, being himself party and

judge in the Court where the suit depended, manifestly against law and justice, and stating that she had received an answer from her Majesty that she, the petitioner, should have law, and also a Justice assigned to sit with the Baron in judgment " (M., 537-8 and 540).

Chichester reports : " The King's officers, since the beginning of his Majesty's reign, upon view of the records of former times, have found many tenures of the Crown to have been suppressed, by reason of false Inquisitions returned of later times " (D.C.H., 267y).

Hugh O'Neill wrote like complaints to Cecil on three occasions, viz. 30th August, 1604 ; 6th December, 1605 ; and 17th June, 1606 (S.P.I., 194, 359, 503). One quotation will suffice : " Has lately sustained some hard measures by some that seek part of his lands, by empanelling inquisitions of lands of ignorant people in Tyrone, without his privity, as he has at large acquainted the Lord Lieutenant expecting remedy at his hands. Will not for the present trouble Cecil further, meaning, if he be not holpen in these causes, to go over himself."

Mr. Justice Saxey, writing to Cecil, 20th March, 1609 (asking for a transfer from Ireland) tells of " A great number of Recognizances taken by him in the end of the last Rebellion, amounting to more than £100,000 ; which, if he had carried a mind to have made his own benefit, he might easily have gained many thousands of pounds by concealment, or secret composition, without check or controlment " (S.P.I.).

Captain Rich complains to Cecil in 1610 : " The Lord Chief Justice hath been a great opposer of the King's right " ; and declares that the Commission for Defective Titles was so abused that " Sir Richard Boyle passed so many parcels of land as the particular contained in the roll of parchment, reached sixteen yards in length " (S.P.I., 552).

Sir John Davies describes Chichester's Commissioners to Cecil : " They retire into some corner of the counties, and in some obscure village execute their commission ; and there, having a suborned jury, find one man's land concealed, another man's land forfeited for non-payment of rent, and

another man's lease holden of the King *in capite.* This being done, they never return their commissions ; but send for the parties, and compound with them, and make a booty upon the country " (Mn., 36). One of these Commissioners, Sir Francis Shane, accused the " great " Earl of Cork, Robert Boyle, of unscrupulous robberies, in a pamphlet : *Abuses Committed by Boyle and Capstock, an English Lawyer.*

Of the courtiers of the time the *Life of the Great Earl of Cork* gives a glimpse, and the authoress is athrill with wonder at the constant bestowing of presents on people of influence, and the unblushing way in which they were accepted by those who could expedite Boyle's " business " in passing Patents or furthering law-suits.

In the 13th Article of the " Remonstrance " of the Anglo-Irish Lords of the Pale in 1613, they complain of " many indirect and cautelous practices used by some escheators and their deputies, in the taking and returning of ' offices,' sometimes contrary to the Dominicals [or finding of the jurors] ; sometimes also keeping the ' offices ' long in their hands before they be returned, and then returning them secretly, without the knowledge of the Party—to the great prejudice of the Subject " (D.C.H., 272).

Prendergast, writing of a later period when the Irish were forbidden to acquire land, says : " The Exchequer Officers constantly held inquisitions for the purpose of obtaining a return that certain lands had been alienated to an Irishman in order thereupon to seize them into the hands of the Crown as forfeited. . . . The Parliament Rolls are full of cases where Inquisitions are set aside for the finding having been malicious and untrue—the parties complained of not being Irish but English " (C.S.).

In the reign of Charles I., Viscount Loftus of Ely, the Irish Lord Chancellor, " upon a full and deliberate hearing, before us and our Council, of the several misdemeanours and irregularities charged against him " . . . was " declared unfit to hold that place any longer." The charges were " undutiful behaviour towards his Majesty, in the business of raising money for his service in Ireland, and his miscarriage in the execution of the great place and charge he held, for

distributing justice and executing the office of Chancellor" (L.M., pt. 2, 15, 1628-39). Particulars of the trial will be found in H. MS. C., 1904.

Hepworth Dixon's defence of Lord Bacon gives an interesting picture of official practices in Stuart reigns :

"The transaction of business in almost every department of life was sealed, either before or after conclusion, by gifts from the favoured party. At the Court and at the Bar, in houses of business and in the domestic circle, in the camp, and even in the schoolroom, favours, appointments, and even the adjustment of personal relations were accompanied by the giving and taking, not merely of the recognised fees, but of presents. Of these, some were secret and others open—some known to be wrong and others regarded as right. Whether the gift had the effect of a bribe probably depended more on the relations and character of the individual concerned than on the nature, pretext, and time of the present. . . .

"A reader who is not a lawyer should remind himself of the state of Society in the days of James I.

"There is no Civil List. Few men in the Court or in the Church receive salaries from the Crown, and each has to keep his state and make his fortune out of fees and gifts. The King takes fees. The Archbishop, the Bishop, the rural dean, takes fees. The Lord Chancellor, the Lord Chief Justice, the Baron of the Exchequer, the Master of the Rolls, the Attorney-General, the Solicitor-General, the King's Sergeant, the utter barrister, all the functionaries of law and justice, take fees. So in the great office of State, the Lord Treasurer takes fees. The Lord Admiral takes fees. The Secretary of State, the Chancellor of the Exchequer, the Master of the Wards, the Warden of the Cinque Ports, the Gentlemen of the Bed Chamber, all take fees. Everybody takes fees; everybody pays.

"A fee is due whenever an act is done. The occasions on which, by ancient usage of the realm, the King claims help or fine, are many; the sealing of an office or grant—the knighting of his son—the marriage of his daughter—the alienation of land *in capite*—his birthday—New Year's Day—the anniversary of his accession or his coronation—indeed,

at all times when he wants money and finds men rich enough and loyal enough to pay. . . .

" The Lord Chief Justice and the Lord Chancellor, like the Secretary of State, are paid by fees.

" The King's Judge is neither in deed nor in name, a public servant; he receives a nominal sum as standing counsel for the Crown; and for the rest he depends on the income arising from his hearing of private causes. These facts appear in a comparison of the amounts paid by the Crown to its great legal functionaries, with the estimated profits of each particular post. Thus the Seals, though the Lord Chancellor had no proper salary, were in Egerton's time worth from ten to fifteen thousand pounds a year. Bacon valued his place as Attorney-General at six thousand a year, of which princely sum (thirty-five thousand a year in coin of Victoria) the King only paid him £81 6s. 8d. Yelverton's place of Solicitor brought him three or four thousand pounds a year, of which he got £70 from James. The Judges had enough to pay their gloves and robes, not more. Coke, when Lord Chief Justice of England, drew from the State twelve farthings less than £225 a year. When travelling circuit he was allowed £33 6s. 8d. for his expenses. Hobart, Chief Justice of the Common Pleas, had twelve farthings less than £195 a year. Tanfield, Lord Chief Baron of his Majesty's Court of Exchequer, £168 6s. a year. Yet each of these great lawyers had given up a lucrative practice at the Bar. After their promotion, they lived in good houses, kept a princely state, gave dinners and masques, made presents to the King, accumulated goods and lands. Their wages were paid in fees by those who resorted for justice to their Courts " (F.B., 246). The Lansdowne MSS. reek with evidence to the same effect.

Even the godly men of Cromwellian days, were alive to the practices which sprang from the lust for land. The " Down Survey " of 1655-6 was intrusted to the " most nasute (*sic*) and sagacious persons such as were well skilled in all the parts practices and *frauds* appertaining unto this work " (D.S., xvi.).

CHAPTER XL.

THE TORTURE OF THE O'BYRNES.

The scandals connected with Wakeman's Patents were not confined to Ulster. His Wicklow grant, as appears from Sir John Coke's MS. (p. 244), was also condemned, but a desperate effort to uphold possession under it was made, and the struggle gives us the measure of the men who surrounded and succeeded Chichester. The malpractice of the time is well illustrated by the spoliation of the last of the Southern Chiefs, the O'Byrnes of Wicklow, and the procedure adopted to strip them of their estates. Their case attracted general attention in England in the seventeenth century. It possesses features which rival the chicane employed in the purloinment of Lough Neagh and the Bann, but it seems equally clear that the authorities in London had no share in the wrong-doing.

The O'Byrne clan had taken the field in Hugh O'Neill's rebellion, but after their surrender Lord Mountjoy advised the Privy Council on 28th April, 1602: "Since his submission, Phelim Mac Pheagh Byrne has behaved loyally, applying himself to tillage and purging his country of loose men, of whom he hath of late sent many to the gaol of Dublin to receive their trial by law. Tyrone pressed him urgently to rebel, when the Spaniards were here; but he refused; and sent a message to Tyrone through one of his priests that, since the Queen's Majesty had made him a subject, he would not again sell the Queen of England for the King of Spain. Asks for a Patent for him" (S.P.I.A., 381).

Accordingly a King's Letter of 16th September, 1603, transmitted instructions "That the country be granted to

Phelim M'Pheagh according to such limitations as the Lord Lieutenant shall prescribe, and the like for all the rest of the lords, according to articles entered in the Council Book; and that some agreement be made between Phelim and Redmond M'Pheagh in the division of that country, or some other course thought of to satisfy Redmond" (E., 12).

Two Inquisitions were held at Newcastle, on 14th March, 1604, and on 26th March 1604 "Phelim M'Pheagh M'Hugh Birne was granted the town and lands of Corbally, Ballyknockan, Ballycreery, Ballincool, Knockdosson, Ballinraheen, Greenawn, and the moiety of Bally Eustace; the lands of Carrickerow in Cosha Co. Wicklow late in possession of Feagh M'Hugh Byrne, of Ballincor, slain in rebellion, and now in the King's hands" (E. 269; Cal. James I., p. 59).

Sir Henry Harrington, however, was given portion of the O'Byrne territory (Cal. James I.) in spite of the proposed settlement with the clan. He was a Privy Councillor and had been appointed with his son seneschal for Wicklow. Harrington was a cultured man who had translated Ariosto (Mn., 27), but in hatred of the Celts he outstripped even Chichester. Under his governorship the O'Byrnes did not prosper, and an effort was made to pension him off.

In order to get rid of him, on 5th June, 1611, the Commissioners for Irish Causes in London recommended to the Privy Council that:

"The Byrnes and all the inhabitants of the Byrnes' Country be admitted to surrender to his Majesty and have re-grants of their lands. . . . That Sir Henry Harrington and his son William surrender their Patent of captainship of that Country, with all rights annexed thereto, for the composition hereafter mentioned.

"Upon the surrender of the Byrnes, their several lands to be granted to them, reserving the highest rent that they can be procured to yield, during the lives of Sir Henry Harrington and his son. And after their death, the fourth part of these rents to be abated . . . Harrington and his son to have a pension during their lives to the value of the first rents to be reserved. . . .

"For the encouragement of the people to surrender, the

Lord Deputy and Council to take order for the mitigation of the ordinary charge in surrendering and passing new Letters Patent " (S.P.I., 69).

Carte tells the rest of the story from depositions in T.C.D. library (MS. F., 3-17, 151). His account of the persecution of the O'Byrnes by the holders of the Wakeman Patent went unchallenged for a century and a half. A modern writer, who, after scant investigation, raised some cavil at the authenticity of these Depositions (I. 17 C.) overlooked the fact that Carte also availed of other sources of information.

The late Sir Thomas D. Hardy and Mr. J. S. Brewer, in their report on the Carte and Carew Payers in 1863, point out that " Carte had access to the collections of the [Protestant] Bishop of Clogher, amongst which he found six volumes compiled by Matthew Barry, Clerk of the Council of Ireland, from the time of Lord Strafford's Government down to 1682 " (p. 7).

Carte's narrative, at all events, is that of an English Protestant historian, and has the merit of presenting a picture of the men and the legal procedure of the period with which we have been dealing. It serves as a suitable background for the story of Lough Neagh. The sequence of dates is not always clear, and there are gaps which require to be allowed for, but the general accuracy of Carte's relation is not to be gainsaid, and is borne out by King's Letters and Patents.

" It was an age of adventurers and projectors ; the general taste of the world ran in favour of new discoveries and plantings of countries ; and such as were not hardy enough to venture into the remote parts of the earth, fancied they might make a fortune nearer home by settling and planting in Ireland. The improvement of the King's revenue in a country where it was far less than the charge of the Government, was the colour made use of by such projectors to obtain Commissions of enquiry into Defective Titles, and grants of concealed lands and rents belonging to the Crown, the great benefit of which was generally to accrue to the projector or discoverer, whilst the King was contented with an inconsiderable proportion of the concealment, or a small advance of the reserved rent. . . .

" One case in truth was very extraordinary, and contains in it such a scene of iniquity and cruelty, that considered in all its circumstances, it is scarce to be paralleled in the history of any age or any country.

" Feagh Mac Hugh Byrne, Lord of the Byrnes' territory, now called the Ranelagh, in the County of Wicklow, being killed in arms towards the latter end of the reign of Queen Elizabeth, she by her letters to Loftus and Gardiner, then Lords Justices, directed Letters Patent to be made out for Phelim Mac Feagh, his eldest son, to have to him and his heirs the country and lands of which his father, Feagh Mac Hugh, died seized.

" King James coming to the Crown not long after, did in the beginning of his reign give the like direction of passing the said inheritance to Phelim. This, Sir Richard Graham, an old Officer in the Army, endeavoured to obstruct ; and in order thereto, sued out a Commission directed to Sir William Parsons and others, to enquire into the said lands ; and upon the inquisition it was found that they were the inheritance of Feagh Mac Hugh Byrne, father to Phelim, and were then in Phelim Mac Feagh's possession. King James thereupon by a second Letter directed, that Ranelagh, and all the lands whereof Phelim Mac Feagh and Brian his son and heir were then seized, should be passed to them and their heirs by Letters Patent ; in consequence whereof another ' office ' was taken, in which the lands were found as in the former. The first ' office ' however was not yet filed. Sir Richard Graham having opposed it, and by his interest and the credit of a general Book which he produced, got possession of part of Phelim's lands, in virtue of a warrant from the Lord Deputy [Chichester]. Sir James Fitz Piers Fitzgerald attempted likewise to get another part of them passed to him upon the like authority ; but Bryan the son, in whose possession they were, complaining of it at the Council Table, Sir James's Patent was stayed.

" Encouraged by this success, Bryan applied himself next to the King for redress against Sir Richard Graham, complaining that, contrary to his Majesty's Letters, part of his lands had been passed to the said Sir Richard. King James

directed the cause to be heard at the Council Board in Ireland, and certificate to be made of the truth. At the hearing, Sir Richard alleged that the lands were the inheritance of certain freeholders, and not of Phelim and his ancestors; and a Commission was ordered for examining witnesses upon this fact. The Council certified the King of their proceedings, and Sir Richard Graham, or an agent duly authorised by him, were required to repair into England. Sir Richard sent his son William, who thought to get Bryan's appeal dismissed by the help of the Duke of Buckingham, and preferred a petition to the King, which the Duke seconded. But the Duke of Richmond being present, and knowing the case, acquainted his Majesty with the true state of the matter.

"The King thereupon referred the hearing and determining of it to the two Dukes, who appointed Sir Dudley Norton, Sir Francis Annesley, Sir Henry Bourchier, and Mr. Richard Hadsor, one of the King's learned Counsel for the affairs of Ireland, to hear the matter and certify the fact. When the case was heard before the Commissioners, Sir William Parsons produced before them a Book of his own writing, calculated to prove the lands in question to be the inheritance of freeholders, contrary to the 'office' which had been found before Sir William himself, and the other which had been taken (as is said above) in virtue of King James's second letter. But the Commissioners giving more credit to those 'offices' than to his Book, Sir William and Mr. Graham seeing that matters were likely to go in favour of Phelim, started an objection which effectually prevented a final determination of the dispute.

"It was a fetch indeed that could not fail of success; for they undertook, with the assistance of Lord Esmond and Redmond Mac Feagh, to entitle the King to the lands or the greatest part of them, and to prove that they were really vested in the Crown. This immediately stopped the proceedings of the Commissioners, who would give no sentence in a case where the Crown was concerned, the right whereof they had no authority to determine.

"Propositions for the benefit and service of the Prince are always favourably received, and a Commission was easily

obtained, empowering Sir William Parsons and others to enquire of the said lands. Bryan acquainting the Duke of Richmond with this, his Grace wrote himself to the Lord Deputy [St. John], and engaged the King and Council of England to send directions to him to stay the Commission. Notwithstanding which, the Commissioners went on with it, and an ' office ' was found that all said lands were the inheritance of Feagh Mac Hugh (Phelim's father) who died in rebellion. But as Queen Elizabeth had afterwards granted them to Phelim and his heirs, and the King had confirmed the same by his Letters, this ' office ' need not have hindered the passing of them to Phelim and Bryan, who were by those letters entitled to Feagh's whole inheritance.

" This, however, could not be obtained, the lands being intended to pass into other hands. Bryan acquainted the King with these proceedings and intentions, and got his Majesty's Letter to the Lord Deputy and Lord Chancellor of Ireland, directing that none of the said lands should pass by Letters Patent, lease, or otherwise, till the matter was heard at the Council Table in England. It happened unluckily for Bryan that the Duke of Buckingham went for Spain before Sir Dudley Norton and the other Commissioners had made their report, and was so taken up after his return that he could not meet the Duke of Richmond to settle and decide the affair ; but he had a much greater misfortune in the sudden death of the latter, which happened soon after, and left Phelim and Bryan without a patron in the Court of England.

" Their enemies soon made an advantage of it, and Sir William Parsons got the Lord Deputy's warrant to the Sheriff of Wicklow to put him in possession of part of their lands. The Sheriff accordingly gave Sir William possession of that part which Phelim enjoyed, but Bryan still kept the other part, which was in his own hands. Lord Esmond thereupon sent for him, and would have persuaded him to refer the matter to his decision, which Bryan declined, knowing that his lordship was a confederate with his adversary, as appeared afterwards, when that lord and Sir William Parsons shared his lands between them. This refusal Lord Esmond resented,

and Sir William Parsons afterwards sued Bryan in the Exchequer for the lands of which he still retained the possession, but his bill was dismissed. Lord Esmond, however, persisted in troubling him for those very lands, but Bryan maintaining his right, he and his brother Turlogh were by their adversaries' practices committed close prisoners to Dublin Castle on March 13, 1625, upon the information of Thomond Archer, and Dermot Mac Griffin, Cahir Mac Edmond Mac Art, and Turlogh Duffe, all three of the name of Kavenagh. This last had formerly plundered one of Phelim's tenant's houses, and carried off the man's wife and cows. Phelim being a Justice of the Peace and of the Quorum, upon his tenant's complaint issued a warrant to apprehend Turlogh Duffe, who fled first into the County of Carlow, and from thence into that of Kilkenny, where he was apprehended; and then by way of revenge, and to save his life, accused Bryan and his brother Turlogh.

"Archer did not so readily submit to be an evidence; he was first miserably tortured, put naked on a burning grid-iron and burnt with gunpowder under his buttocks and flanks, and at last suffered the strapado till he was forced to accuse the two brothers, and then he obtained his pardon. Dermot Mac Griffin and Cahir Mac Art were afterwards executed at Kilkenny, declaring at the hour of death that they had accused Bryan and Turlogh Byrne falsely. Such were the witnesses that deposed against them; yet on their information two bills were preferred against them, and two several Grand Juries at Carlow, not finding the bills, were prosecuted in the Star-chamber and fined.

"The two brothers, however, were still kept close prisoners, till the 20th of August following, when Turlogh was enlarged upon bail to appear on ten days' warning: and Bryan was allowed the liberty of the house. This still disabling him from taking care of his affairs, he petitioned the Council, who referring the matter to Lord Aungier and the Lord Chief Justice, Bryan was set at liberty on Christmas eve, but bound to appear in Court the first day of the next term. He appeared accordingly, and nothing was alleged against him; yet the Lord Chief Justice was for binding him over to the

term following. Bryan opposed this, urging that it was the motion of his adversaries, and intended only to keep him from following his business, and desired he might be bound over to appear in Michaelmas term, which would allow him time enough to go to England and prosecute his affair there. So much time was not thought proper to be allowed him, and he was bound to appear on ten days notice. This was still thought too much liberty for a man to enjoy, who was supported in his cause by two Letters which King Charles, by the advice of his Privy Council, and the Committee for Irish affairs, had sent over to the Lord Deputy [Falkland] for passing the lands to Phelim and his son; though the great person who had got possession of them, still found means to prevent the effect of those Letters. And, therefore, a new prosecution was set on foot, and Bryan and Turlogh appearing upon summons, were again, on November 2, 1627, committed close prisoners to the Castle of Dublin, loaded with irons, without any diet from his Majesty, or leave for any friend to visit or relieve them, though in the presence of the Constable and his son.

"This was done upon the information of Art Mac Cahir Kavenagh, who, being condemned at Carlow Assizes, was prevailed with to accuse the two brothers, but being afterwards executed there pursuant to his sentence, declared at his execution to the Sheriff, Mr. Patrick Esmond (a brother of Lord Esmond's) that he had accused them falsely, and desired him to certify the Lord Deputy of it. Their adversaries, however, resolved to go on, and to involve the three other brothers and their father, Phelim, in the same common accusation of relieving and keeping company with one Morrogh Baccogh Kavenagh, who had for his crimes been banished for seven years, and returning before the term expired, was killed in making resistance against those that attempted to apprehend him. Morrogh was guilty of a contempt in returning, but yet was under the King's protection; so that it was neither felony nor treason to converse with him. Neither had Phelim or his son ever known or seen the man; yet this in defect of another, was to serve for the matter of their accusation; probably because it best suited

the witnesses who were to be suborned, and being of a private nature was the less liable to be refuted. Phelim and his sons had been zealous in apprehending Bryan Kavenagh (Morrogh's brother) and two others concerned with him in the murder of Mr. Ponte, for which they were executed; which rendered it not very likely that Phelim should correspond familiarly or criminally with Morrogh; but naturally enough led people to think that the latter's relations might, out of a spirit of revenge, be the more easily drawn to swear anything that would do mischief to the former, especially when it would be the means of saving their lives.

"Lord Esmond had then in prison one of Morrogh's nephews, who was with him when he was killed, and had been in rebellion. He sent this man to Dublin to accuse Phelim and his sons, which the threats of being hanged, and the promise of life and pardon, prevailed with him to do. James Mac Elife, brother-in-law to Morrogh and Bryan Kavanagh, was made use of for the same purpose. One, Nicholas Notter, a notorious thief, had been prosecuted so hard by Phelim for stealing seven cows and five garrons from his tenants, that he was forced to fly the county of Wicklow, where two indictments for those thefts were found against him; but being afterwards condemned for a robbery in the North, he was sent back to Dublin to purchase his life by accusing Phelim and his sons; for which he was likewise rewarded with apparel and other necessaries. Gerald Mac Fardorogh, brother-in-law to Shane Bane (who being in rebellion was apprehended by Phelim's son, Hugh, and executed), had been at the last Lent Assizes prosecuted by Phelim for robbing his house, and being put in irons in the Castle of Dublin for another crime which he confessed, was not to join in the accusation. Edmund Duffe had been prosecuted by Mrs. Wolverston, Phelim's daughter, and condemned for burglary; he was afterwards carried to the gallows, and being ready to be turned off, promised to accuse Phelim, and was saved from execution. Lisagh Duff Mac Laughlin, a common thief, had at the last Wicklow Assizes, upon the prosecution of Luke Byrne, Phelim's nephew, for stealing a horse, been condemned, but was on his accusing Phelim set at liberty.

Such were the witnesses made use of in this affair ; none of which were produced in person ; and yet it was resolved to find a bill against Phelim and his five sons at Wicklow Assizes, upon the bare reading of these, or some of these fellows' examinations, which (as the men could speak only Irish) were most of them taken by Sir Henry Belling's and Mr. Graham's interpretations.

" The Lord Chief Justice, upon sight of the evidence, expressed a doubt whether the Jury would credit it ; upon which Sir Henry Belling pressed him to sign the bill and said he would undertake that the Jury should find it. Proper measures, indeed, were taken for it, and Lord Esmond had got Piers Sexton, who had married his niece, and was a tenant to Sir William Parsons, to be made High Sheriff for the job ; though he had no such freehold as would by statute qualify him for serving that office. A Grand Jury was impanelled ; Sir James Fitz Piers Fitz Gerald, a mortal enemy of Phelim and his family, and who had a promise of part of Phelim's estate, or an equivalent in lieu thereof, was the foreman, though he had no land in the county. Sir Henry Belling, who had actually got possession of part of the said estate, was the second ; most of the rest were not freeholders, and all of them allied to, or dependent on, Lord Esmond, Sir William Parsons, and others, who had interest in Phelim's estate. 'Tis no wonder that such a Jury found the bill, which was followed two days afterwards by the death of Phelim's wife, who expired of grief to see her husband's and children's lives and fortunes put into such hands, and exposed to such imminent danger. She was buried at Wicklow, and her body dug up three weeks afterwards.

" Though the Grand Jury had thus found the bill, yet other witnesses were necessary for the trial of the parties. Sir Henry Belling (who never stuck at any practice however execrable to carry his point) and Mr. William (son of Sir Richard) Graham, who had got into possession of part of Phelim's estate of Cosha, undertook the finding of them. They were both of them Provosts Marshal, and exerted all the power of their posts for the purpose. 'Tis almost in-

credible what a number of persons they took up, and detained in close prison for weeks and months together, soliciting them all the while with promises of reward, and threats of hardships, even of death itself, to accuse the gentlemen whose inheritance they wanted to seize. Some they put to the rack, others they tried and condemned by martial law, at a time when the Courts of Justice were sitting. Some of the latter who were executed at Dublin, as Shane O'Toole, Laghlin O'Clune, Cahir Glasse and his brother, declared at their death in the hearing of thousands, that they were executed because they could not accuse Phelim and his sons ; and the like declarations were made by others who suffered in the country.

" Some friends of the persecuted gentlemen, seeing by how infamous and detestable methods their lives and estates were attacked, made application on their behalf to the King and Council of England, with such success, that a commission was sent over to enquire into the affair.[1] The chief of those friends who thus interfered was Sir Francis Annesley, afterwards Lord Mountnorris ; and this (as far as I can find) seems to me the only ground of the imputation laid upon him by a noble Historian, of being an enemy to the Deputies of Ireland, and of attacking them for their administration, as soon as they left the Government. The commission was directed to the Lord Primate of Ireland, the Lord Chancellor, the Archbishop of Dublin, the Lord Chief Justice, and Sir Arthur Savage, who sat upon it day after day for a fortnight together in the latter end of November and the beginning of December, 1628 ; taking the depositions of a great number of witnesses ; wherein the truth of the above-mentioned circumstances of this prosecution fully appeared, by the testimony of Mr. William Eustace of Castlemartyn (father to Sir Maurice Eustace, afterwards Lord Chancellor), and other unexceptionable persons. This restored the gentlemen to their liberty, though not to their estate, a considerable part whereof, particularly the Manor of Carrick, in the Ranelaghs,

[1] With a view to testing Carte's accuracy the King's Letter of Charles I. has been examined. It is dated 3rd October, 1628, and directs the suspension of all proceedings against Phelim M'Feagh Byrne. It entirely bears out Carte's narrative.

had been during their imprisonment passed to Sir William Parsons by a Patent dated the 4th of August, 1628.[1]

" This affair made a great noise all over the Kingdom, and furnished occasion for some articles in the ' Graces ' granted about this time, and though there appears no other instance of the like treatment ; though Compositions for Defective Titles were generally made on easy terms, and the hardships suffered were confined to a few particular persons ; yet the apprehension of them was more general, and the terror thereof extended to all " (C.O., pp. 27-32).

A letter was written by Lord Deputy Falkland defending himself for his share in the transaction (M., 366), addressed to the English Privy Council, dated 8th December, 1628. His daughter had married the heir of Sir Terence O'Dempsey, who had some part in the persecution of the O'Byrnes. This Deputy was not the famous Falkland who fell at Newbury, but his father. His letter and the Depositions are printed by Sir John Gilbert (H.C., vol. i. p. 167).

The doubt cast on the authenticity of the Depositions by Miss Hickson was afterwards retracted (I., 17 C., vol. i. p. 40 ; vol. ii. p. 405). Carte's *Ormonde* in which they are thus summarised, is spoken of by Dr. Johnson as " that book of authority." Chichester's henchman, Sir James Carroll, was made Falkland's scapegoat. Archbishop Usher reports, 21st January, 1628-9 : " We have at last made a poor return unto your Lordship of our Commission in the business of Phelim M'Feagh Birne, &c." Provost Bedell, T.C.D., writes to Usher, 5th March, 1628-9 : " We have obtained this night a warrant from my Lord Chancellor to the Sergeant at Arms to arrest Sir James Carroll who in all this time of Your Grace's being in Dublin would never be seen, and is now as we hear in town " (U.L. 400-3, 418).

The O'Byrnes must have recovered part of their patrimony in Strafford's time, for he exacted £17,000 from them " on pretence of Defective Title " (O'D., vol. i. p. 168).

[1] Here also Carte is corroborated by the grant, which will be found in Morrin, 356.

CHAPTER XLI.

INSURGENT ULSTER.

Let us now turn to the more modern history of the famous fisheries. In less than nine months after the Patent to Lord Donegall, Charles II. granted the entire Bann from Lough Neagh to the sea (*i.e.* both the tidal and the non-tidal river) to the City of London.

This was a re-grant (10th April, 1662) of the Patent of 1613 from James I., which Charles I. cancelled in 1638, but promised to restore in 1641, and which was restored by Cromwell in 1656. The title of the City to the river was, according to English law, unimpeachable, and the smallest investigation would have shattered both Clotworthy's encroachment and Lord Donegall's patent.

No one at that period could successfully have challenged the Londoners' legal right to the Bann. The Bishop of Derry attempted it, by an ejectment for his fishing, in 1670, but was non-suited. In 1684 the Irish Society (in whom the City Charter vested) filed a Bill to perpetuate testimony, in which the entire Bann, from the sea to Lough Neagh, was claimed. The only person who contested it was the Bishop of Derry, and he (later on) accepted £250 a year for the extinguishment of his claims (C.V., clxxvi.).

On 4th December, 1691, the second Lord Massereene rented the fishings from the Londoners for two years at £1,050 per annum (C.V., 76).

As his Crown lease lasted until 1755, this shows how little reliance he placed upon it.

In 1703 the agreement with the Bishop of Derry was ratified by a private (English) Act (3 and 4 Anne, c. 1),

and the payment of £250 a year to his See was made perpetual. The original bargain of the City with James I. entitled the Londoners, in case any dispute as to their title arose, to " further assurance " from the King, and, if necessary, to an Act of Parliament, to protect their rights. As time wore on, however, the true extent of their interest under the Charter seems to have been forgotten or overlooked. When the older members of the London Corporation died out, it was inevitable that their places should be taken by others less acquainted with the case. The facts had also been blurred by the confusions of the Commonwealth and the Revolution of 1688. The first trace of any relinquishment of part of the waters granted them appears in an ambiguous entry made by a Committee of the Irish Society. It runs :

" 3rd August, 1739.

" The Committee drew out a statement relative to their fishings, by which it appeared that rents were paid by the Society for several fish-houses, viz. : the Cranagh at Coleraine, £15 ; Gribbin, £10 ; Lord Donegall, for privilege, etc., £4 14s. 6d. per annum. They represented the extent of the Bann fishings to be from the sea to the Leap, a mile above Coleraine, being about five miles " (C.V., p. 111).

After 1739 no further entry relating to the fisheries appears until 8th March, 1769, when it is recorded that " Lord Donegall filed a Bill in the Exchequer against the Society, on the subject of the fisheries " (C.V., p. 126).

This was an allegation of trespass by the erection of traps or " cuts " at the Salmon Leap on the Bann near Coleraine.

In 1775 many of the City records were destroyed by fire, and on the 18th May, 1787, " Counsel were consulted on the steps necessary to be taken to defend the right of the Society to their fishery in the River Bann " (C.V., 132).

In 1755 the lease from Charles II. to Clotworthy expired, and Lord Donegall's reversion became operative. That Lord Massereene paid him rent during the ninety-four years of its currency, after the reversion was assigned by the King in 1661, has never been attempted to be proved. The first Lord Donegall who enjoyed the fee-simple under the Patent

died two years after the Clotworthy Lease fell out. The next Lord Donegall, while making no claim to the ownership of Lough Neagh, asserted title to the Bann in 1769. The Londoners' Charter had not (as already stated) been ratified under the Great Seal of Ireland, and the Irish Society did not stubbornly resist his pretensions to the non-tidal river. In the century which had elapsed since the grants of 1661-2, knotty constitutional questions had arisen as to the legality of acts done in England to bind Ireland, when not validated by the Irish Parliament, or passed under the Great Seal of Ireland.

The Londoners doubtless felt the frailty of an English-sealed Charter to confer title to Irish estates. So grave a blot was the absence of the Irish Great Seal, that no sooner was objection raised, than an Act had to be hurried through the Parliament in Dublin, in 1795, to legalise grants sealed in England.

As regards the public, no claim was made by the Donegalls which infringed the right to fish the Bann or Lough Neagh. An explanation of the local circumstances exhibits the reason. In 1755 when Clotworthy's lease expired, Protestant Ulster was in a state of insurgency at the rapacities of the absentee Lord Donegall, who had never visited his estate. He died in 1757. The next Lord Donegall did not arrive in Ireland until 1765 (U.L.W., 43). His greed outdid even that of his predecessor. So dire was it that King George III. and the Lord Lieutenant, Earl Townshend, united in public condemnation of his exactions.

Ultimately the Protestants broke into insurrection. Notices like the following (issued 12th May, 1766) show the earlier state of feeling :

" Whereas great abuses have been committed on the Belfast demesnes belonging to the Earl of Donegall, by breaking down walls and fences, hunting with dogs, climbing over the castle walls ; also the walls of his lordship's park have been frightfully broken or pulled down by idle or designing persons from the adjoining mountain," etc., etc. (U.L.W., 50).

His Patent as regards Lough Neagh and the Bann could

hardly at that time have been successfully asserted against the public, and no attempt was made to thrust the fact of its existence upon the local population.

There was no police force ; the judges were removable by the Crown ; the Throne and the Viceroy were united in execration of the Patentee, and the Courts, as against embattled Ulster, would not have been eager to assist so hateful and unmeritorious a subject. An understanding of the epoch in which it first became theoretically possible for Lord Donegall to assert his title to the fisheries will enable the reader to appreciate why his attacks were confined to the Londoners.

The Northern settlers came of a class not easily trifled with. Three Histories of the Irish Presbyterian Church describe their origin. Professor Reid writes :

" This Province (Ulster) was now occupied by settlers, who were willing enough to receive and respect ministers when sent, but who were far from being generally characterised by a desire for enjoying religious ordinances. On the contrary, a great number of those who accompanied the original proprietors, and who occupied their lands, were openly profane and immoral in their conduct, and were generally inattentive to the sacred institutions of the Gospel. The following description of their conduct and character, though probably a little overcharged, is given by Stewart.

" ' From Scotland came many, and from England not a few, yet all of them generally the scum of both nations who, from debt or breaking and fleeing from justice, or seeking shelter, came hither, hoping to be without fear of man's justice, in a land where there was nothing, or but little as yet, of the fear of God. And in a few years there flocked such a multitude of people from Scotland, that these northern counties of Down, Antrim, Londonderry, etc., were in a good measure planted, which had been waste before. Yet most of the people were all void of godliness, who seemed rather to flee from God in this enterprise than to follow their own mercy. . . . Thus on all hands atheism increased, and disregard of God ; iniquity abounded with contention, fighting, murder, adultery, etc., as among the people, who, as they had nothing

within them to overawe them, so their ministers' example was worse than nothing. . . . For their carriage made them to be abhorred at home in their native land, insomuch that *going for Ireland* was looked on as a miserable mark of a deplorable person. Yea, it was turned into a proverb ; and one of the worst expressions of disdain that could be invented was to tell a man that *Ireland would be his hinder end.* While thus it was, and when any man would have expected nothing but God's judgment to have followed this crew of sinners, behold the Lord visited them in admirable mercy' " (H.I.P.C., 91).

These accounts are confirmed by Blair.

" Although amongst those whom Divine Providence did send to Ireland, there were several persons eminent for birth, education and parts, yet the most part were such as either poverty, scandalous lives, or at the best adventurous seeking of better accommodation, had forced thither, so that the security and thriving of religion was little seen to by those adventurers, and the preachers were generally of the same complexion with the people " (H.P.C., vol. i. p. 91-3).

The offspring of such ancestors were ill to drive, and historians like Mr. Froude and Mr. Lecky assign to Lord Donegall's exactions against them a historic responsibility. His evictions during the critical period under investigation forced North East Ulster into insurrection ; and the emigration he provoked contributed largely to the success of the American Revolution. Froude writes :

" Sir Arthur Chichester, the great Viceroy of Ireland under James I., was, of all Englishmen who ever settled in the country, the most useful to it. His descendant, the Lord Donegall of whom it has become necessary to speak, was perhaps the person who inflicted the greatest injury upon it. Sir Arthur had been rewarded for his services by vast estates in the County Antrim. The fifth Earl and first Marquis of Donegall, already, by the growth of Belfast and the fruit of other men's labours while he was sitting still, enormously rich, found his income still unequal to his yet more enormous expenditure. His name is looked for in vain among the nobles who, in return for high places, were found in the active

service of their country. He was one of those habitual and splendid absentees who discharged his duties to the God who made him, by magnificently doing as he would with his own. Many of his Antrim leases having fallen in simultaneously, he demanded £100,000 in fines for the renewal of them. The tenants, all Protestants, offered the interest of the money, in addition to the rent. It could not be. Speculative Belfast capitalists paid the fine, and took the lands over the heads of the tenants, to sub-let.

"A Mr. Clotworthy Upton, another great Antrim proprietor, imitated the example, and at once the whole country-side were driven from their habitations. Sturdy Scots, who in five generations had reclaimed Antrim from the wilderness, saw the farms, which they and their fathers had made valuable, let by auction to the highest bidder; and, when they refused to submit themselves to robbery, saw them let to others, and let in many instances to Catholics, who would promise anything to recover their hold upon the soil. . . .

"The most substantial of the expelled tenantry gathered their effects together, and sailed to join their countrymen in the New World, where the Scotch-Irish became known as the most bitter of the Secessionists."

Mr. Froude traces to these evictions the uprise of the "Peep of Day" and the "Hearts of Steel" conspiracies, and adds:

"It is rare that two private persons have power to create effects so considerable as to assist in dismembering an Empire and provoking a civil war. Lord Donegall, for his services, was rewarded with a marquisate, and Mr. Clotworthy Upton with a viscountcy [Lord Templetown]. If rewards were proportioned to deserts, a fitter retribution to both of them would have been forfeiture and Tower Hill. . . .

"Throughout the revolted Colonies, and therefore probably in the first to begin the struggle, all evidence shows that the foremost, the most irreconcilable, the most determined in pushing the quarrel to the last extremity, were the Scotch-Irish whom the Bishops and Lord Donegall and Co. had been pleased to drive out of Ulster" (E.I., v. ii. 118-141).

Thus the " great Viceroy " who would have exported the Irish as slaves to the Virginias, left a successor who transplanted them as freemen to New England.

Mr. Lecky suggests that the fines demanded from the Donegall tenantry did not exceed £20,000, but states that the formidable outbreak, which occurred in the counties of Antrim and Down, " was mainly attributable to the oppression of a single man—the Marquis of Donegall. . . . The conduct of Lord Donegall brought the misery of the Ulster peasantry to a climax ; and in a short time many thousands of ejected tenants, banded together under the name of Steelboys, were in arms." Their " formidable insurrection," he says, caused the " great Protestant emigration " from Ulster to America :

" In a few years the cloud of civil war, which was already gathering over the Colonies, burst ; and the ejected tenants of Lord Donegall formed a large part of the revolutionary armies which severed the New World from the British Crown " (I. 18 C., v. ii. 47-51).

Benn tells the story in much the same way :

" An estate in the county of Antrim, a part of the vast possessions of the Marquis of Donegall (an absentee) was proposed, when its leases had expired, to be let only to those who could pay large fines ; and the agent of the Marquis was said to have exacted extravagant fees on his own account also. Numbers of the former tenants, neither able to pay the fines nor the rents demanded by those who, on payment of fines and fees, took leases over them, were dispossessed of their tenements, and left without means of subsistence. Rendered thus desperate, they maimed the cattle of those who had taken the lands, committed other outrages, and, to express a firmness of resolution, styled themselves ' Hearts of Steel.' One of their number, charged with felony, was apprehended and confined in Belfast, in order to be transmitted to the county gaol. Provided with offensive weapons, several thousands of the peasants proceeded to the town to rescue the prisoner, who was removed to the barrack and placed under a guard of soldiers [23rd December, 1770]. . . . Being delivered up to his associates, they marched off in

triumph. . . . So great and wide was the discontent that many thousands of Protestants emigrated from those parts of Ulster to America, where they soon appeared in arms against the British Government, and contributed powerfully, by their zeal and valour, to the separation of the American Colonies from the Crown of Great Britain" (B.H.B., 111).

A Proclamation proscribing the insurgents was issued on the 25th January, 1771; but, on the 6th April, 1772, George III. himself wrote to the Lord Lieutenant of Ireland, Townshend:

"His Majesty's humanity was, at the same time, greatly affected by hearing your Excellency's opinion that the disturbances owe their rise to private oppression, and that the over-greediness and harshness of landlords may be a means of depriving the Kingdom of a number of his Majesty's most industrious and valuable subjects. The King does not doubt but that your Excellency will endeavour by every means in your power to convince persons of property of their infatuation in this respect, and instil into them principles of equity and moderation, which, it is to be feared, can only apply an efficient remedy to the evil" (U.L.W., p. 104).

Murders, maimings, cattle houghings, cattle driving, the acquittal of guilty prisoners by sympathetic juries, and all the worst phases of agrarian revolt, convulsed Protestant Ulster for eighteen years.

Froude, however, is inaccurate in suggesting that the "grabbers" of the Protestant farms were Catholics. Nevertheless it is the fact that the Catholics were restrained from abetting or sharing in the outrages, and that the Antrim Grand Jury exempted them in 1772 from the tax levied off the guilty—"the Catholics not being implicated in these depredations." The Carrickfergus Grand Jury of 1783 recorded the "dutiful and peaceful demeanour" of the Catholics (C.E., 498) in a resolution protesting against their being admitted to the franchise. The Secretary to the "Hearts of Steel," on the 10th March, 1772, wrote: "Not one Roman Catholic is ever suffered to appear amongst us" (U.L.W., 102).

Emigration and blood-letting at last brought comparative quiet. The Belfast *News-Letter* of 16th April, 1773, computed "that, within forty years past, 400,000 people have left this Kingdom to go and settle in America." In the three years from 1771 to 1773 alone 101 ships left Ulster ports, carrying over 30,000 emigrants.

Lord Donegall's example was catching. In a Report to the "Irish Society," in 1802, its secretary, Mr. Robert Head, of Doctors' Commons, says of the Right Hon. Richard Jackson (a middleman on the London Cloth-workers' estate near Coleraine):

"It is commonly reported in the country that, having been obliged to raise the rents of his tenants very considerably, in consequence of the large fine he paid, it produced an almost total emigration among them to America; and that they formed a principal part of that undisciplined body which brought about the surrender of the British Army at Saratoga" (C.V., 213).

Eight subscribers to the Declaration of American Independence were Ulstermen, who owe their fame mostly to Lord Donegall's oppressions. The heroic Andrew Jackson, who defeated the British at New Orleans in 1815, was the son of one of Lord Donegall's evicted tenants (H.C., 527; U.L.W., 117).

In November, 1772, the Lord Lieutenant proclaimed a pardon to "the wicked and dangerous insurgents who, in July, 1770, assembled themselves in arms in large numbers in the counties of Antrim, Down, Armagh, Derry, and Tyrone."

This calmed popular feeling, and a little later (15th June, 1773) John Wesley in his diary excuses the oppressed people thus:

"When I came to Belfast I learned the real cause of the late insurrection in this neighbourhood. Lord Donegall, the proprietor of almost the whole country, came hither to give his tenants new leases. But when they came they found two merchants of the town had taken their farms over their heads; so that multitudes of them, with their wives and children, were turned out to the wide world. It is no wonder

that, as their lives were now bitter to them, they should fly out as they did. It is rather a wonder that they did not go much further ; and, if they had, who would have been most in fault ? Those who were without home, without money, without food for themselves and families, or those who drove them to this extremity ? "

Lord Donegall devoted the money, the exaction of which crowned the American Revolution with success, to artistic uses. In a letter of the 21st June, 1788, to Lord Charlemont, Mr. Halliday, writing from Belfast, says : " Lord Donegall has expended £20,000 on books, not yet opened, and £10,000 on shells, not yet unpacked " (H. MS. C., 1894, p. 75).

So stern a virtuoso was hardly likely to sleep on his rights to Lough Neagh, if they could have been asserted. Yet he made no attempt to challenge public user over any part of its vast waters. As to the Bann, he was in a difficulty. He had either to abandon all claims under the Patent of 1661, or assert its validity against the Irish Society. The Donegall Patent was prior, by nine months, to the Charter of the Bann to the Londoners—the latter being dated 10th April, 1662, and the former 3rd July, 1661. A nine months' priority was a slender foundation on which to build a title, but the Londoners were now only in possession of the tidal river ; and their case suffered from the fatal weakness that they enjoyed no Patent sealed under the Great Seal of Ireland.

He seized on these flaws in 1771, and began an action against the lessee of the Irish Society, for making traps at the Salmon Leap of Coleraine (C.V., clxxx.). For the trial of such a trespass, Co. Derry would be the natural venue, but, in order to escape the influence of the Londoners with the jurors there, Lord Donegall selected Co. Armagh for the hearing of the case. To attach an appearance of propriety to such a venue, he feigned the existence of a fishery in the part of Lough Neagh within Co. Armagh ; and this, he pleaded, was injured by the traps fifty miles away. In essence his suit challenged the validity of the Society's right to the entire Bann. He contended that the Londoners' grant of 1662, under the Great Seal of England, was invalid ;

and this view was encouraged by important judges (C.V., clxxxiii.) both before and after the assertion of Ireland's legislative independence in 1782. The Londoners, therefore, confined themselves to a defence of the tidal fishery, which they held at least by possession.

When or how they relinquished their grasp on the non-tidal Bann cannot be traced. Their estate in Ireland was not closely looked after in the eighteenth century owing to its remoteness and the difficulties inseparable from corporate management in London.

The account of their legal struggle with Lord Donegall possesses remarkable features, as related by their own Solicitor, Mr. Babington, M.P. for Derry. His description of the forensic and judicial efforts on their behalf by the notorious John Fitzgibbon, first as Attorney-General, and then as Lord Chancellor of Ireland, displays some comic touches. One sat in the Upper House and the other in the Lower, and between them, they probably thought it a sufficient triumph even at the loss of the non-tidal Bann, to pass the Act dispensing with the necessity for the Great Seal of Ireland, which otherwise would have been essential to the validity of their charter.

This saved the Ulster estate of the Corporation which was then put in jeopardy by Lord Donegall's litigation.

CHAPTER XLII.

THE GREAT SEAL OF IRELAND.

The hearing of the action brought by Lord Donegall against the Londoners (through their lessee, Lady Hamilton), was delayed by fatalities such as the death of either Plaintiff or Defendant; but, on the 25th March, 1788, counsel for each party consented to the jury at Armagh returning a special verdict, drawn up by the lawyers on both sides. This set forth the title of Plaintiff and Defendant, and admitted the making of the traps at Coleraine. The terms of the verdict cover twelve pages of print; and its effect was afterwards discussed in the Irish House of Lords, where it was held that a good cause of action was therein disclosed against the Irish Society. It displays many errors as to facts.

The invalidity of Lord Donegall's title was never hinted at. His Patent of 1661 was treated as conclusive evidence of his claims.

No question of the right of the public was raised in this litigation. Both Lord Donegall and the Londoners concurred in upholding the genuineness of their common title from the King. Each admitted the validity of the other's Patent; and the dispute was confined to one issue: whether the "cuts" at Coleraine could constitute a trespass to a fishery alleged to exist in the Armagh portion of Lough Neagh. By this device, Lord Donegall asserted a recognition of his Patent against those who apparently should have been most interested to challenge it, without any inquiry into its origin, nature, or legality. The Londoners did not attack it because their own Patent was precarious, and each side was content to retain something lest they should lose all.

Amongst the Counsel for the Londoners was the Attorney-General, John Fitzgibbon (later Lord Chancellor and Earl of Clare), who was a bitter assailant of Lord Donegall in the Irish Parliament. He afterwards managed to be eminently serviceable to his clients in his judicial capacity. When the appeal from the verdict at Armagh was ripe, Fitzgibbon had become Lord Chancellor, and, as Lord Clare, presided not only over the first Appellate Court, the Exchequer Chamber, but over the House of Lords. Mr. Babington, M.P., who instructed him when at the Bar as Solicitor for the Irish Society, writing on 11th December, 1804, cheerily records Fitzgibbon's tactics in 1794 :

" Coupled with questions put, and observations made, by Lord Clare from time to time in the course of the argument, the counsel of Lord Donegall were obliged to abandon totally the line of argument they had pursued in the inferior Court. . . .

" When the argument closed on both sides, the cause stood over for judgment ; a day was appointed, and, when it arrived, such was the opinion of the gentlemen concerned for Lord Donegall, from what they observed in the course of the cause ; and so completely had they given up every idea of succeeding, that they actually declined coming into court, imagining that we only wished to exult in their defeat. Yet, most unexpectedly, indeed, the two assessors gave their advice to the Lord Chancellor to decide in favour of Lord Donegall ; and on the 31st of January, 1794, his lordship pronounced his judgment, in which, although he directed the judgment of the Court below to be affirmed, knowing that the case would receive the ultimate decision of the final tribunal, he went so fully into the merits, and to the entire conviction of the bystanders, that in justice to that great man, and in order to give a more complete view of the case, I beg leave to annex a copy of the note I took of the judgment at the time it was pronounced " (C.V., clxxxiv.).

To get rid of the effect of the Armagh verdict the Irish Society were obliged to spend thousands of pounds. In 1795, Mr. Babington was driven by judicial objections to hurry a Bill through Parliament to save the estate of his clients.

He procured the Act 35 George III. c. 39 validating grants of Irish land made under the English Great Seal which he smuggled through the Dublin Parliament (C.V., clxxxv.).

The peril in which the Charter of the Londoners was placed before the Act passed is illustrated by the argument in the Irish House of Lords on the 3rd March, 1795 :

" Lord Pery raised the question whether a grant under the Seal of Great Britain can pass lands in Ireland.

" Lord Chancellor Clare pointed out that upon the naked possession alone the action would lie. . . . If it were not for a clause in the Act of Settlement, the grant made to Lord Donegall would have been divested and re-vested in the Crown. But, to avoid that, there is a clause in the Act confirming all Patents, so that this Patent does stand confirmed by an Irish Act of Parliament, for the very purpose of avoiding the divesting clause of the Act of Settlement. I should submit, therefore, whether this does not confirm the Patent. And I remember to have been counsel in this case at the Assizes, where I went for the very purpose of showing that Lord Donegall had no title, but the clause in the Act of Parliament put that out of the case " (3 Ridg., p. 267).

There is no clause in the Act of Settlement such as Lord Clare alleged. If he meant to refer to Clause 132, this only relates to Patents of estates vested by that Act, and it gives no validity to a Patent such as Lord Donegall's. His grant was not issued in circumstances which gave it the protection of the Act. Lord Clare's remark was really intended to protect the Irish Society, whose position then was most infirm. If any clause " confirmed all Patents," it would have been needless to rush the Great Seal Act through in 1795 to save the Irish Society. Lord Clare having apparently misread the Act of Settlement, took no exception to the Donegall Patent at Armagh in 1788.

Mr. Babington narrates that Lord Donegall, having won his suit, filed a Bill in Equity, in 1795, for an injunction to remove the traps at Coleraine. The answer of the lessee of the Irish Society averred that " the whole country " considered Lord Donegall's fishery in the Bann an eel fishery, and their own a salmon fishery. Eels are trapped in descent

from fresh water to salt, and salmon are caught when ascending from the sea to fresh water—the spawning habits of one species being the reverse of the other. In 1798 the injunction went, and Mr. Babington states :

" Knowing, as I did, the consequences that would follow to the Society if this decree be carried into effect, and as it had struck my own judgment so powerfully many years ago, that the Society, as the inheritors and owners of the soil, should not, either in law or conscience, be bound by decisions to which they were not parties, as to induce me to leave the idea in writing, sealed up amongst the papers in the cause, lest any accident should befall me before it was fit to bring it into action ; the same thought never having occurred to anyone else concerned for the Society, I resolved to prevent or retard the operation of the decree by every possible means " (C.V., cxc.).

The death of Lord Donegall caused the suit to " abate," and fresh proceedings ended in a similar injunction in July, 1800. Another appeal was then taken on behalf of the Londoners to the Irish House of Lords, which was about to meet for the last time in history. Mr. Babington boasts :

" It turned out a most fortunate circumstance that I filed this Bill and raised the injunction upon it, for want of an answer, as, on account of some defect in the Union Act, or for want of some explanation respecting it, the appeals sent from Ireland were not sufficient, and new petitions addressed to the United Parliament were ordered to be prepared ; and before that could have been completed, the ' cuts ' would most inevitably have been pulled down, under the Exchequer decree. But I afterwards prepared a new petition of appeal to the United Parliament, and it, of course, operated as a further injunction against the demolition of the works.

" Pending this appeal (which as we were in possession and full enjoyment) . . . I did not press to an early hearing, Lord Donegall put in what was called a Demurrer to the Bill, filed in the name of the Society in Chancery, the event of which, if he had succeeded in it, would have been a total end to the suit and all its objects, and after a hearing of many days (and the case was argued by nearly twenty lawyers) I

had the mortification to see the Demurrer allowed by the Master of the Rolls, on the following grounds : That if he should overrule the Demurrer, retain the cause, and grant an injunction, it would operate as a contradiction or suspension of the decree of the Court of Exchequer ; and that he thought it wrong to set up the orders of one Court against those of another Court of equal jurisdiction.

" Discouraging and unexpected as this determination was, I resolved to follow the matter up, from the thorough conviction I felt that what was then allowed on all hands to be the real merits had never been fairly discussed in any stage of the business ; and accordingly I preferred a petition to the Lord Chancellor, praying that the cause might be re-heard by himself, which was granted, and in less than half an hour's hearing I had the unspeakable satisfaction of obtaining his Lordship's decision in our favour, with costs, and that, too, to the thorough conviction, as it should appear, of Lord Donegall's own counsel. The Chancellor having offered to indulge them in as much time to prepare for a reply as they pleased to ask for, if they thought they could offer any new argument, or could find any authorities of cases where Demurrers were ever allowed under such circumstances ; which they declined availing themselves of, and admitted that they had already, on the cause being set down for re-hearing, made every research in their power, without effect.

" It was on the 12th day of November, 1801, that this Demurrer was overruled by his lordship, and the Injunction I had before obtained until Lord Donegall should answer the allegations in the Bill was continued ; and from thence until the present time he never has attempted to give in any answer, nor is there any great probability of his speedily doing so, as, when he does, he must admit the matter aforesaid, and the necessity he was under of making such admissions if he had answered, was his inducement to put in the Demurrer, and thereby preclude all further inquiry into the merits. Neither has he paid one shilling of the costs awarded by the Lord Chancellor against him " (C.V., p. cxcii.-iii.).

After this upset in 1801, Lord Donegall's successors remained quiescent, and a thirty years' lawsuit failed.

The litigation, and the intrigues of Lord Chancellor Clare on behalf of his old clients, need not have amazed posterity if the King's Letter which Lord Donegall pretended to warrant his Patent had been examined. The contention was never made that its wording showed no intention to alien the Bann from the Londoners (as their subsequent grant demonstrated), or that the matter should have been put to a test in 1661 by an Inquisition of " office."

Lord Clare's supposition that the " Act of Settlement " in 1662 validated the Patent may explain this. His misconception and the defect in the title of the Irish Society as to the lack of the Irish Seal may have prevented his opening the grounds on which it could have been annulled. As regards the Bann, possession now gives protection to Lord Donegall unless and until the advisers of his Majesty challenge it with the contention that the Statute of Limitations affords no answer to a plea of fraud upon the King.

Here the case of the historic river approaches an end, and that of Lough Neagh in its modern aspect opens. It is the last stage of the narrative. Hitherto these pages have unfolded only that part of the conspiracy which relates to the robbery of the great and powerful—first, the Irish chiefs ; second, the Crown ; and third, the Corporation of London. The closing story reveals the attempt to deprive the poor of their daily bread, and the public of immemorial rights. A forged lease, which two Lords of Appeal did not hesitate to stigmatise as it deserved, was one of the instruments relied on in this enterprise. The culprit, however, was not Lord Donegall, nor does any disgrace attach to his name for the final fraud connected with the fisheries.

CHAPTER XLIII.

CHALLENGING PUBLIC RIGHT.

In all recorded time the waters of Lough Neagh had been fished as freely by everyone as the high seas. The nets of clusters of fisherfolk all around its banks in five counties swept it at pleasure. The owners of boats and barges plied and traded on it as they listed. Its levels had been raised or lowered for canals and drainage by the Government, and its waters taken by Municipalities without question. Until 1872 no alleged proprietor had ever come forward to assert any right in connection with this vast inland sea. The parchments of Stuart Kings had been treated as so much waste-paper by their owner, who had not even taken the trouble to keep possession of the original Patents.

The Lord Donegall, whose proceedings we now have to chronicle, succeeded to the estate in 1799. He survived until 1844, and his dispositions of the Bann still prevail, and continue to control the fishery of the river. His first leases were made for comparatively short periods; but, as his necessities increased, so did the length of the tenures he created. On the 1st October, 1803, he demised the salmon fishing of the Bann, for sixty-one years, at £50 a year, to "Edward May, Esquire, Junior, of Belfast." This Edward May was his brother-in-law, and son of Sir Edward May, Bart., M.P. for Belfast, whose daughter was Marchioness of Donegall. On the same day that May got this lease, he was also granted the limestone quarries on the Donegall estate in Co. Antrim. The connection between the two grants is important, as will afterwards appear.

There had been trouble in the days of a previous Lord

Donegall over the working of the quarries (U.L.W., 24). Lime had become extremely valuable about Belfast both for flax-bleaching, as well as for tillage and building purposes, yet the Quarry Lease and the Fishery Lease were each made at a rent of £50 a year. Although this was a nominal sum, if May paid rent for the Quarries, he certainly did not do so for the fishery. The parchments in the Dublin Registry of Deeds prove that in 1803 the Marquis was in sore straits for money. A few weeks before the grants, May obtained judgment against him for £2,390 7s., while another creditor marked judgment for £713 6s. On foot of these the Sheriff of Antrim put up Lord Donegall's plate, furniture, and other chattels for sale by public auction. May bought them in, and by deed of the 4th November, 1803, conveyed them to nominees "upon certain trusts." Another deed, of 1st November, 1804, records "a final settlement and adjustment of all accounts" between May and the Marquis, which ascertained that the Marquis owed May £26,643 2s. 9d. This debt he agreed to liquidate by paying May an annuity of £2,000 a year, with 5 per cent. interest.

To secure this, a mortgage was executed by Lord Donegall covering the whole of his estates, whereby an annual rent-charge of £2,000 was granted to May until the debt should be paid. These transactions clearly exhibit the fact that May held his noble brother-in-law in his power.

In 1807 Edward May twice became a Parliamentary candidate for Carrickfergus, but Lord Donegall's unpopularity had then waxed so great, that May was beaten in his own borough, although the "Dropmore MSS." show that a few years earlier the Donegall influence was such that a Marquisate was its price in the Dublin Parliamentary market. May acted as "sovereign" of the unreformed Corporation of Belfast, which Lord Donegall controlled, in 1807, '8, '9, '11, and '16 (T.B.B., 335). He had previously been an officer of Yeomanry, but became a clergyman in 1809 to enjoy a "Donegall" living. May remained agent to the estate throughout (B.H.B.).

On the 7th August, 1810, Lord Donegall's necessities grew so pressing that May joined him as mortgagee in selling for

£5,421 nine-tenths of the debentures in the Lagan Navigation Company for which the previous Marquis paid £62,000. These monetary troubles are inferentially explained by the statement that in 1819 Lord Donegall owed a jockey named Kelly £28,000 (U.L.W., 53).

On the 5th November, 1811, May assigned to Sir George F. Hill, for £500, the fishery lease of 1803. Sir George was Recorder to the Derry Corporation, and a prominent politician. It was he who identified Wolfe Tone amongst the French officers captured off the Irish coast in 1798. His letters to Dublin Castle on the state of Ulster are quoted by Lecky (I. 18th C.). On the 1st November, 1811, Lord Donegall granted the fishery which May held to Sir George Hill by lease for sixty-one years at £60 a year. This lease became the parent of much subsequent litigation, and May's surrendered parchment figures sensationally therein.

The terms of Lord Donegall's Lease to Hill govern those of three subsequent instruments. Attention was fastened on them in 1878 by the House of Lords and the granting words are therefore set forth :

" All That and Those the salmon trout pulling and scale fishings of Lough Neagh and of the River Bann as far as the rock or Salmon Leap in as full ample and extensive a manner as the same have heretofore been enjoyed by the said Marquis of Donegall and those under whom he has derived with liberty of taking and carrying away and exporting of such fish with the appurtenances in the Counties of Down Armagh Tyrone Antrim and Londonderry and Liberties of Coleraine and the precincts thereof and also all profits benefits and advantages whatsoever to the said fishery belonging or appertaining.

" Together with full power of going to the banks of said Lough and River and every part thereof within the aforesaid limits and of laying thereon nets and other necessary implements for fishing together with all and singular the weirs dams watercourses rights privileges commodities advantages and appurtenances to the said fishery belonging or appertaining and usually enjoyed therewith.

" For the purpose of catching and taking salmon and other fish except eels within the known and accustomed limits of

said fisheries *as late in the tenure of the Reverend Edward May by virtue of an Indenture of Lease thereof bearing date the* 1*st day of October* 1803 *from the said Marquis of Donegall to the said Edward May for* 61 *years from November* 1802 reserving the yearly rent of £50 sterling and which said lease and premises have since by mesne assignment thereof or otherwise legally come to the said Sir G. F. Hill and were by him duly surrendered to the said Marquis of Donegall before the execution of these presents

" Excepting and always reserving out of this grant and demise the eel-fisheries of Lough Neagh and River Bann and of the precincts aforesaid " (O'N. *v.* J., 237). Hill, therefore, got and could give no Lease larger in extent than that which May took in 1803.

On the 31st March, 1829, Lord Donegall made a lease for three lives, renewable for ever, of the fisheries comprised in the lease of 1811 to Hill. It was granted to John Wallace, of Belfast, Attorney at Law, in trust for N. D. Crommelin, who thus became entitled to the rent under Hill's lease and to the reversion when it expired (1st May, 1872). Wallace paid a fine of £600, and the rent was £55 7s. 8d. per annum. Its terms followed Hill's lease exactly, viz. : " the salmon trout pulling and scale fishings of Lough Neagh and of the River Bann as far as the rock or Salmon Leap in as full ample and extensive a manner as the same have heretofore been enjoyed by the said Marquis of Donegall and those under whom he has derived.

" With liberty of taking and carrying away and exporting of such fish with the appurtenances in the Counties of Down Armagh Tyrone Antrim and Londonderry and Liberties of Coleraine and the precincts thereof . . . for the purpose of catching and taking salmon and other fish except eels

" *Within the known and accustomed limits of said fisheries as formerly in the tenure of the Rev. Edward May by virtue of an indenture of lease thereof bearing date the* 1*st day of October* 1803 *from the said Marquis of Donegall to the said Edward May for* 61 *years from November* 1802 reserving the yearly rent of £50 late currency, and which said lease and premises afterwards by mesne assignment thereof or otherwise legally

came to the before-named George Fitzgerald Hill and were by him duly surrendered to the said Marquis of Donegall.

" Excepting and always reserving out of this grant and demise the eel fisheries of Lough Neagh and River Bann and of the precincts aforesaid . . . for three lives . . . and for and during such other life and lives as shall for ever hereafter be added hereto by virtue of the covenant for perpetual renewal hereinafter contained subject to the said recited lease of the 1st day of November, 1811, and made between the Marquis of Donegall and Sir G. F. Hill" (O'N. *v.* J., 244).

On the 28th January, 1857, Wallace's lease was converted into a fee-farm grant in favour of N. D. Crommelin, at £60 a year. The same words again restricted it to the " known and accustomed limits " of May's lease.

At the risk of tediousness, but to put the matter beyond cavil, the leading words are set out, viz. : " The salmon trout pulling and scale fishings of Lough Neagh and of the River Bann as far as the Rock or Salmon Leap in as full ample and extensive a manner as the same were enjoyed by the said George Augustus, late Marquis of Donegall and those under whom he derived with liberty of taking and carrying away and exporting of such fish with the appurtenances in the Counties of Down Armagh Tyrone Antrim and Londonderry and liberties of Coleraine and the precincts thereof for the purpose of catching and taking salmon and other fish except eels

" *Within the known and accustomed limits of said fisheries as formerly in the tenure of the Rev. Edward May by virtue of the said indenture of lease thereof bearing date the* 1*st day of October* 1803 *from the said late Marquis of Donegall to the said Edward May for* 61 *years from November* 1802 and which said last mentioned lease and premises afterwards by mesne assignment thereof or otherwise came to the before-named George Fitzgerald Hill and were by him duly surrendered to the said late Marquis of Donegall

" Excepting and always reserving the eel fisheries of Lough Neagh and River Bann and of the precincts aforesaid . . . subject to the said lease of the 1st November 1811 made

between the Marquis of Donegall and the said Sir G. Hill Bart. of the other part for 61 years " (O'N. *v.* J., 254).

After Hill's lease expired in 1872 two things happened. Crommelin, through Bristow, his trustee, leased to the Irish Society for £2,250 (subject to the rent of £60), his rights to the " scale " fish in the Bann under the fee farm grant. At the same time he determined also to make a profit out of Lough Neagh by putting an end to public fishing therein. With that view Bristow began a test action for trespass against local fishermen, one of whom, named Cormican, was made Defendant. This was the first attempt to destroy public right in Lough Neagh since the conquest of Ulster. It ended only in the House of Lords, and went so near success that hundreds of poor families narrowly escaped ruin.

The strength of the plaintiff's position in this action was that the public, according to the law of England, can enjoy no legal right to fish in inland waters, no matter how long or how uninterruptedly and openly their fishing has continued. Its weakness lay in the fact that Lord Donegall had never obtained possession of Lough Neagh, and that the general user by the natives has been as continuous as the existence of man in Ulster. Still, the only protection to public enjoyment was the slender bulwark derived from the legal principle that the plaintiff must succeed on the strength of his own title, and not on the absence of any right in the defendants.

It followed, if strictly English law was applied (viz. that no length of enjoyment of a profit *à prendre* by the general public creates a right to its continuance, as against the owner of the soil), that the only defence the fishermen had lay in an attack on the title of the plaintiff. Thus the legal struggle over Lough Neagh became a battle between a plaintiff asserting a paper title, against defendants without any title that the law of England recognised. Bristow, therefore, confidently set down his action for trial in Belfast, before an Antrim Special Jury, in March, 1874. The law did not then allow juries to be got rid of by the subsequent device of obtaining an injunction before a Chancery Judge. The " fusion of law and equity " under the Judicature Act had not taken place, and injunctions had not become

applicable to actions of trespass. The case was tried by Mr. Justice Lawson, who reported afterwards that the sympathies of the jury (Protestants to a man) lay with the fishermen. His own were with those who were trying to despoil them.

This judge had already won himself a place in public disesteem. As a Parliamentary candidate, he gained the seat for Trinity College in 1868 by deceiving the electorate as to his views on the Disestablishment of the Irish Church. When asked why no reference to the then burning question was to be found in his Election Address, Mr. Lawson piously replied, it was for the same reason that the Romans had no law against Parricide—the crime being impossible to a Roman. After election he acted as Law Officer of the Government which passed Disestablishment, and then became a Commissioner to distribute the spoils of the Church he had betrayed.

At the threshold of the case lay the preliminary question of the extent of the lease, upon which Bristow's claim was founded. Until it was shown that Lough Neagh was within the demise from Lord Donegall to Hill in 1811 and to May in 1803, no inquiry into Lord Donegall's title was necessary, for if the lease of 1803 did not embrace Lough Neagh neither could that of 1811, and therefore the reversionary lease of 1829 was of no effect as a grant of the Lough. Yet, without requiring the production of May's lease, Judge Lawson directed a verdict against the fishermen, and refused to allow the jury to decide the question which they had been empanelled to try. There was much hocus pocus to prove Lord Donegall's title, which could only have come in question when the extent of May's lease had been shown. Instead of being produced, it was withheld from the tribunal. An air of reality was lent to the proceedings by putting in evidence a selection of documents relating to the Donegall title, viz. :

Lease, 1660, Charles II. to Clotworthy.
Entry of Clotworthy's payment of rent in 1659-60.
Patent, 1661, Charles II. to Lord Donegall.
Lease, 1811, Lord Donegall to Sir G. F. Hill.

Lease, 1829, Lord Donegall to Wallace (for Crommelin).
Sub-lease, 1837, Duckett and Henderson to Lord O'Neill.
Fee-farm grant, 1857, Lord Donegall to Crommelin.

The " acts of ownership " over Lough Neagh relied on by Bristow were certain prosecutions by Lord O'Neill, who held under a sub-lease, granting him its fishing.

But who had authorised that sub-lease ? No one except the trustees of Sir George Hill, who in 1837 made the demise by the supposed virtue of Hill's lease of 1811.

Lord O'Neill, whose demesne of Shane's Castle abutted on Lough Neagh, had then been for ten years the lessee of the Toome eel fishery, situated where the Bann issues from the Lough, under a demise made in 1827 at a rent of £369 4s. 7d. a year for 5,000 years. For this he paid Lord Donegall the enormous fine of £7,384 12s. 3d. (O'N. *v.* J., 242-8). When steam communication with England threw open profitable markets for fresh fish, the Bann lessees saw their interests grow yearly more valuable.

Into the bosom of Lough Neagh thirteen rivers pour, and there is only one outlet, the Bann.

Natural was it that they should regard the Lough as the reservoir of their wealth. Casting greedy eyes upon its great expanse, they sought to make believe that it was theirs. To establish that some lease of a bygone Marquis of Donegall embraced Lough Neagh became for them a sore concern. Naboth's Vineyard was not more keenly coveted. Towards the middle of the nineteenth century the Bann lessees examined their parchments to descry from them whether they could not found a title to the Lough.

Lord O'Neill was anxious, besides, as a riparian owner to buttress a title to Lough Neagh, which his predecessors asserted in 1775 against the then Lord Donegall. He probably deemed it prudent (as Lord Blackburn held) to have some parchment by which a colour of title was added to his riparian claim.

Two English gentlemen, Sir Geo. Duckett and Alex. Henderson (a Mayfair doctor), trustees of the estate of Hill, obliged Lord O'Neill by making him a sub-lease of the Lough. In it a proviso of a most unusual kind was, however, inserted

declaring that the sub-lease was not to be taken as a warranty on their part of the title of Lord Donegall to demise the fishings (3 A.C., 655). Lord Chancellor Cairns in 1878 laid stress in the House of Lords on this precaution, and also pointed out that " This sub-lease professed on the face of it, to demise the fishings of Lough Neagh within the limits only of the lease of 1811, and of course could not have affected the fishings beyond these limits."

Naturally Lord O'Neill, during the currency of his sub-lease, made no attempt to interfere with public fishing. On three occasions, it is true, he served summonses at Petty Sessions, for trespass on the Lough near his demesne, but otherwise he left the fishermen undisturbed. It was when this sub-lease expired that Bristow, for the first time in history, proceeded to challenge public right in the entire Lough.

As no " act of ownership " by any Lord Donegall could be established, Bristow, to prove possession, fell back on the three prosecutions by Lord O'Neill. Of course, the magistrates who fined the fishermen at Petty Sessions were in the dark as to the real title ; nevertheless their convictions, coupled with the Patent, led Judge Lawson to enter a verdict for Bristow in trust for Crommelin, who thus, under his fee-farm grant, was declared entitled to all the scale fish in Lough Neagh. So the Belfast trial ended in grief for the fishermen.

The defendants then knew nothing of the contents of May's lease, and no question was raised about it, but they impeached Judge Lawson's ruling by an unanswerable point. This was that the question whether a " several " fishery existed in Lough Neagh, and was vested in the plaintiff, should have been left to the jury, and that the judge was wrong in taking the decision of such a matter into his own hands. With scant ritual Judge Lawson's direction was reversed by the Court of Exchequer (Chief Baron Palles, Baron Fitzgerald, and Baron Dowse), who held that there had been a miscarriage, and that the opinion of the jury should have been taken on the point.

A new trial was therefore ordered. Against this decision the plaintiff appealed, in 1877, to the Exchequer Chamber,

as the Appellate tribunal was then styled. There Judge Lawson came in, to support himself, and solemnly declared that Bristow had "established as clear a documentary title to a several fishery in the entire of Lough Neagh as ever was submitted to a Court." In this determination, he had the assistance of Judge Keogh and Chief Justice Morris, and the Appeal tribunal was equally divided. Chief Justice Whiteside, Judge Fitzgerald and Judge (James) O'Brien delivered judgments strongly favouring public right; and as the Judges were three to three, the ruling of the Court of Exchequer in favour of a new trial remained undisturbed. A son of the Rev. E. May argued the appeal for Bristow. He was then Attorney-General, and afterwards became Lord Chief Justice of Ireland.

In 1878, Bristow appealed to the House of Lords, and there, it seems, the importance of ascertaining the terms of May's lease was, for the first time, insisted on. Its suppression at the trial threw the case upon different lines, and this will explain the discussion of a number of topics which, strictly speaking, would only have become relevant when Bristow had established that Crommelin's fee-farm grant embraced Lough Neagh. This he never did, and never could have done.

CHAPTER XLIV.

THE TRIUMPHANT FISHERMEN.

That the fishing in Lough Neagh by the public was constant, unrestrained and open every Judge declared. Acts of the Irish Parliament, in the reigns of George II. and George III. deal with the Lough, both as a fishing-ground and for navigation purposes, without any reference to its supposed owner Lord Donegall, although he was then a member of the Irish Legislature.

An examination of these Statutes reinforces the argument derived from the scrutiny of the grants. The first of the Navigation Acts as to Lough Neagh was passed in 1753, three years before the expiry of Clotworthy's lease. It was twice re-enacted, after the Donegall title vested, without Lord Donegall's consent being obtained, or any compensation given for his supposed rights. The Act of 1753 (27th Geo. II. c. 3) was passed to enable the River Lagan to be made navigable, and "to open a passage by water between Lough Neagh and the town of Belfast." Funds for construction were provided by an excise duty locally levied. This Act was renewed in 1763 (3rd Geo. III. c. 6), and again in 1771 (11th and 12th Geo. III. c. 26). The latter Statute added the provision that the "Sovereign and the Burgesses of Belfast" (which body the Act states included Lord Donegall) should expend the money raised for the works.

In 1787, by the 27th Geo. III. c. 30, another canal from the southern end of Lough Neagh to Newry was authorised, as well as a third canal, from the western shore of the Lough to the collieries of Drumglass, Co. Tyrone. Section 23 appoints Commissioners for the Newry navigation to Lough

Neagh, and section 39 for the Tyrone navigation. The Act gives them power to " manage, direct, repair and govern " the works through and to Lough Neagh. Such works necessarily involved the penetration of the banks of the Lough and an interference with its bed, as well as a change in the level of the water.

In 1791 the 29th Geo. III. c. 31, recites that " the inland navigation, which has been made from Lough Neagh towards the collieries in Drumglass, cannot be carried forward to Drumglass without very great expense " ; and it substituted a trackway " from the head of such navigation." The banks of the Lough must thus have been invaded, yet no proof that Lord Donegall was compensated is forthcoming. In 1793 (33rd Geo. III. c. 10) the powers of the Commissioners authorised to construct the canal from Lough Neagh to the sea near Newry were enlarged, and again the supposed owner of the Lough was never referred to.

These were public Acts, and in none of them was Lord Donegall's title recognised, although successive Marquesses of Donegall were members of the Legislature which passed them. If Lord Donegall owned Lough Neagh, it is strange that his title should not be acknowledged in these Statutes, and that no thought of the supposed owner occurred to the mind of the Irish Parliament, which was entirely dominated by the landed interest. From that time until now, barges have plied uninterruptedly through Lough Neagh freighted with merchandise, without toll being paid to Lord Donegall.

Side by side with such legislation, fishery Statutes were enacted for the protection of salmon, etc., throughout Ireland and in these Lough Neagh was named as a public fishing-ground. Thus, in 1777, the 17th and 18th Geo. III. c. 19, sec. 7, recited :

" Whereas the fisheries of Lough Neagh, Lough Erne, and other loughs, and of the rivers flowing thereto and therefrom, are greatly injured by large draft nets with ground ropes and sinkers, drawn therein from the 25th August to the 25th December by persons pretending to fish for pollens."

There was then no " close time " for pollen ; and therefore the case of persons who availed of their right to catch pollen,

with the illegal purpose of netting salmon out of season, was provided against. If " several fisheries " in private hands were being legislated for, the preamble to sec. 7 would not have been cast in that mould.

In 1799, the 39th Geo. III. c. 51, sec. 2, enacted that it would " materially conduce to protect the fisheries in Lough Neagh and the River Bann " if all persons having or using boats were registered. The Mayor of Coleraine was appointed Registrar, and was empowered to take security from the boatmen that their cots " shall not in any wise be employed in the taking of fish contrary to law." This did not mean contrary to private right, but to public Statutes regulating the time and mode of capture. Had Lough Neagh and the Bann been then in private hands, such legislation would have been absurd.

For, if Lord Donegall possessed Lough Neagh or the Bann, he could prevent any person fishing therein, whether the mode of capture was " contrary to law " or otherwise. He would not have required an Act to prescribe the registration of boats by the public, for anyone fishing without his consent would be a trespasser whom he could warn off and prosecute. The entire magistracy and machinery of the law were then in the hands of his class, and as disorder in Ulster had ceased, no mercy would have been shown to wrongdoers.

The last Acts dealing with Lough Neagh, though without specific mention of its name, were passed in 1881 and 1891, when the Imperial Parliament established a " close " time for pollen. This fish is captured only in Lough Neagh for commercial purposes, yet these public Statutes were not introduced at Lord Donegall's instance or for his benefit. The Act of 1881 was a Government measure, and that of 1891 was carried by the Conservative Member for South Antrim, Mr. E. Macartney. For neither was the assent of Lord Donegall or his lessees sought. Thus both Navigation and Fishery Acts negative the idea that his Patent was ever recognised or acted on.

Then come the Drainage Acts, and these are equally silent as to his " rights." By extensive public works which drained and canalised the Bann, the Government lowered the

level of Lough Neagh ; and its " banks " (reserved to Lord Donegall by Patent) were left high and dry without his leave being asked. More remarkable still, the reclaimed land resulting from the drainage was sold by the State to the highest bidder, without compensation being paid to or claimed by him. Yet not only the " banks " but the " bed and soil " were alleged to be his exclusive property.

A triple array of Navigation, Fishery, and Drainage Statutes are, therefore, repugnant to the Donegall title.

Another obstacle to it arises, in the argument derived from the taking of Municipal water-supply from Lough Neagh. Towns like Lurgan draw their water, for domestic and manufacturing purposes, by means of pumping-engines thrust into the lake, without legislative authority, and without permission being sought from Lord Donegall or rent or fine paid to him. To erect steam-engines to subtract the private waters of a lake, unless with the owner's consent, would be an unheard-of proceeding, in the face of a valid Patent. Yet it is done in Lough Neagh.

Lastly, the islets in the Lough—Ram's Island and Coney Island—although granted in the Patent, are not Lord Donegall's property.

He paid no rates for either island, or for the other 100,000 acres comprised in Lough Neagh. The rating question bears vitally on his Patent, as since 1848, a " several " fishery of any kind is (by the 11th and 12th Vict. c. 92, s. 22) a rateable hereditament. Yet no rates were paid and the Rating authority was not even informed by Lord Donegall that a " several " fishery existed in Lough Neagh. If it did, its alleged owner evaded the burdens attached thereto for more than half a century, and so did his lessees.

Some or all of these topics were relied on by the Judges who held in favour of public right. It was also fortunate for the fishermen that when Bristow's appeal reached the House of Lords in 1878, Earl Cairns was Lord Chancellor. He was a Conservative leader—an Ulsterman who had been Member for Belfast (1859-66) and knew the history of the Plantation. With him sat Lord Hatherley, a Liberal ex-Lord Chancellor ; Lord Blackburn, whose experience and

learning were unrivalled ; and a Scottish Peer, Lord Gordon. On the 28th March, 1878, they unanimously decided in favour of the fishermen, dismissed the appeal, and upheld the order for a new trial.

In doing so, the Law Lords did not confine themselves to the technical point on which Judge Lawson's " direction " had been upset in the Court of Exchequer in Ireland, namely, that the question of the existence of a " several " fishery should have been submitted to the jury. They went much further afield, and impeached the title set up by the Patent. Lord Cairns (having described the documents then in evidence) said :

" I assume, therefore, if King Charles II., or his tenant in his right, was, in 1660, entitled to the several fishery in the whole of Lough Neagh, the documents would carry on that title and pass it on to the present appellants, no adverse title being shown. But was it really admitted or proved that in 1660 King Charles II. or his tenant was thus entitled ? Certainly it was not admitted, and the question must be : Was it proved ; and in what way was it, or could it be proved ?

" The Crown has no *de jure* right to soil or fisheries of a lough like Lough Neagh. Lough Neagh is, as your lordships are aware, the longest inland lake in the United Kingdom, and one of the largest in Europe. It is from 14 to 16 miles long, and from 6 to 8 miles broad. It contains nearly 100,000 acres ; but, though it is so large, I am not aware of any rule which would *prima facie* connect the soil or fishings with the Crown, or disconnect them from the private ownership either of riparian proprietors or other persons. Charles II., or some of his predecessors, may have become possessed of the Lough and its fishings, either by grant or forfeiture, or otherwise ; but it would be a legitimate and necessary subject of inquiry how and from whom, and subject to what conditions or qualifications, this possession or proprietorship was obtained.

" With regard to the payment of rent, there is evidence of a payment made in 1660 [by Clotworthy] ; or, it may be thought, of one payment immediately before and one payment immediately after the date of the lease of the 15th

November, 1660. But, although the lease would run on until 1755, and the rent would continue to be payable to the Earl of Donegall, no evidence is produced that any rent was subsequently paid.

" From 1660 to 1811 there is a complete blank as to anything that would be evidence of ownership or seizin in 1660. In 1811 there is a lease by the then Marquis of Donegall, to Sir George Hill, of fishings in Lough Neagh for 61 years expiring in 1872, at a rent of £60. But the extent of the fishings included in this lease does not appear to me to be necessarily co-extensive with the whole of the lake. On the contrary, the lease appears on the face of it, to raise a question as to the extent of the fishings intended to be demised, which could be solved only by parol evidence. The description of the fishings demised is this : ' All that and those the salmon trout, pulling and scale fishings of Lough Neagh . . . in as full and ample and extensive a manner as the same have heretofore been enjoyed by the Marquis of Donegall and those under whom he has derived . . . for the purpose of catching and taking salmon and other fish except eels within the known and accustomed limits of said fisheries as late in the tenure of the Revd. Edward May, by virtue of an Indenture of lease dated 1st October, 1803 '—which lease had come by assignment to Sir George Hill, and had been surrendered.

" It is impossible not to see that this lease is not meant to be a demise without qualification of the fisheries of the whole lake, and that parol evidence of the *known and accustomed limits* of the fisheries as then lately held by the Revd. Edward May might have been introduced and might have been material. . . . It may be, that on a further trial, further or other evidence may be produced, and the decision may be taken upon materials different from those now before your lordships " (3 A.C., 1878, 652-6).

Lord Hatherley added :

" What strikes me throughout the whole case is this : That there is in this paper title, which has been set up, a great meagreness with respect to several documents which are referred to, but none of which is produced, and for the non-production of which no cause is assigned. . . .

"It is of very great importance . . . to see how it was that the property became vested in the Crown, of which we have no history at all. Clearly no one has a right to say that it became vested in the Crown because it belonged to nobody else. This is an inland lake, and therefore it is not a portion of land belonging to the Crown by reason of its being on the shore of the sea, or a navigable strait or river. . . . And when you come to the lease of Sir George Hill, you find that it is founded upon the grant which had already been made to the Rev. Edward May by a demise of 1803, and the grant is to hold in the same manner and to the same extent in fact as May had held. That made it particularly important that we should see the lease to May. That lease to May, or the counterpart of it, must be among the archives of the Donegall family by whom this lease was made; but that document has not been produced. That being the state of things, it seems to me impossible to say that this lease stands in the position of a separate demise found to have been made at some distant and remote period, as to which no other evidence is accessible, and supported by the payment of rent under that demise. . . . The payment of rent proved in evidence seems to be inconsistent with the paper title set up by the records, because that paper title upon the record would make the rent payable to Hill at a time when it appears in evidence to have been payable to the agent of Lord Donegall. Therefore, the case seems to be beset with difficulties in many ways from a lack of sufficient information" (pp. 658-9).

Lord Blackburn's judgment pointed out that: ". . . If King Charles II. had a title to the soil of the Lough, he conveyed it in fee to the Earl of Donegall, subject to the lease for 99 years. He professes also to grant something more, viz., the right to come on the bank of the lake with nets. No evidence is given as to anything being done between this date of 1661 and the 1st November, 1811. I do not think this absence of evidence would justify an affirmative conclusion that the lessee for 99 years during that term and the Earl of Donegall's heirs after 1755, when that term had by the efflux of time expired, did not do anything in exercise of the

title claimed, but there is no evidence of their having done anything. And the absence of that evidence seems to me to weaken the effect of the document of 1660, and the payment of rent under it."

Lord Blackburn also commented on the absence of the lease to the Rev. E. May, and said : " The language of the Indenture of 1811 is such as to afford room for the inference that the advisers of the Marquis did not think it prudent to bind him by an unlimited covenant for quiet enjoyment, without words limiting it to the known and accustomed enjoyment." . . . . He then asked :

" Whether it is conclusively shown that Charles II. had in 1660 and 1661 title to the property he purported to demise to Sir John Clotworthy and convey to Lord Donegall ? I think he had not. . . . The Crown might have had title in many ways, by forfeiture, escheat, or otherwise. But generally speaking, in order to make such a title in the Crown perfect, there must be ' office found.' And here not only is there no evidence of any ' office ' found, but the Indenture contains what purports to be a dispensation from the Statute of Henry VI., showing that there was not any ' office ' found. I think, therefore, that Mr. Justice Fitzgerald is quite right when he says that we must deal with the grants of 1660 and 1661 in the same way as if the grantor was a private individual."

The final judgment was that of Lord Gordon, who concurred, holding that evidence of possession was necessary.

The Lords in effect said to Bristow : " Your lease has first to be construed, on the question whether it applies to Lough Neagh, by a lease of 1803 to the Rev. Edward May. Where is that lease ? " Thus May's lease acquired an actuality seldom exercised by a spent and surrendered deed. It was the root of title, not merely to Lord O'Neill's sub-lease (now expired) but to the Fee-farm grant on which Bristow's case depended.

When the penetrating vision of Lord Chancellor Cairns, Lord Blackburn, and Lord Hatherley focussed attention on its bearing on the title to Lough Neagh, a new situation was created. It was realised that though the instrument itself

was spent and dead, the words of May's lease retained a potent vigour controlling the grant to Crommelin, which was to last for ever. The judgments also established four legal propositions :

1st. That the soil or waters of inland lakes are not vested in the King in right of his Crown.
2nd. That the title of the Crown to make grants must be proved as strictly as that of private individuals.
3rd. That to perfect title in the Crown in the case of escheats, etc., there must be " office " found.
4th. That the Patent of Charles II. was of itself not to be regarded as proving that the Crown had the right to make the grant.

After this decision the claimant to the " scale " fishery of Lough Neagh abandoned the proceedings, and nothing more was done for twenty-seven years to trouble the public.

In spite of Judge Lawson's declaration that Bristow " had as clear a documentary title to a several fishery in the entire of Lough Neagh as ever was submitted to a court," the defeated plaintiff never ventured to test it by a second action. His claim was killed by the House of Lords. Judges who most strongly supported the rights of property were repelled by the consequences which would result from the success of such a suit, and every obstacle that legal instinct could create was thrown in his way. Nevertheless, in 1907, fresh litigation to check the public user of Lough Neagh was begun. This time the proceedings were taken by the lessees of the Bann eel fisheries.

In 1905 they obtained from the grandson of the Marquis of Donegall, Lord Shaftesbury, a lease which included eel-rights in both Lough Neagh and the Bann. The excuse for this afterwards offered was that nets were being used to capture eels near the mouth of the Lough. This, it was alleged, was an innovation which injured the Bann eel-fishery, and compelled the Lessees of the eel weirs under the O'Neill lease of 1827 to apply to Lord Shaftesbury to include Lough Neagh in their grant. The plea that the new lease was obtained defensively, or was provoked by

eel-netting, is barred by the stern simplicity of dates. It was made on 18th July, 1905, in pursuance of an agreement of the 28th January, 1903, but in 1903 no eel-netting had begun.

Net-fishermen in inland waters have, since the Act of 1848 (11th and 12th Victoria, c. 92, s. 13), to take out licences, which are issued by the local Fishery Board, in order to provide a revenue by which the Conservators can hire bailiffs to cope with unseasonable fishing. This method of providing income was wrested from its purpose by the Coleraine Board, who were mostly elected by the Bann lessees. They illegally refused, after the Act of 1848, to issue licences for eel-nets, and by this stratagem put an end to an ancient custom of netting for eels in Lough Neagh. They freely licensed nets for salmon, trout, and pollen, but by the device of granting no licence for eel-nets they limited the public to using lines for eel capture in Lough Neagh. Such implements were, of course, less effective than the nets which were originally employed, and after fruitless protests the fishermen compelled the Conservators by *mandamus* in 1906 to license nets for the capture of eels.

Not until after Lord Shaftesbury's new lease was made were any steps taken to cope with this unwarrantable refusal. The Order of the Court of Appeal, granting a *mandamus*, was issued on the 26th February, 1906. Lord Shaftesbury's lease of Lough Neagh was signed on the 18th July, 1905, and recites that it was made in pursuance of a prior agreement of 28th January, 1903. It was therefore no more provoked by the netting of eels than was the Bristow litigation.

Three years before nets were employed to capture eels, the Bann lessees were negotiating for the surrender of their lease of 1827, and the obtaining of the new lease. That this was an offensive and not a defensive instrument is further proved by the fighting clauses therein. Lord Shaftesbury covenants " that he will at all times during the continuance of the said term on the request and at the cost of the lessee produce in any court of law all such deeds and documents of title as shall be in his possession or procurement, and shall be required for the purpose of upholding the rights of the lessor

and of the lessee in the said fisheries, and shall at the like cost do any act or execute any deed for the confirmation of the premises, and give to the lessee any assistance he may require for the purpose of maintaining his rights, if such should at any time be questioned."

It follows, therefore, that Lord Shaftesbury, in 1905, demised a lawsuit. His covenant to produce " documents of title " was not onerous, for he had no Patents or ancient proofs, and the lessees had to rely on scraps of enrolments from the Irish Record Office to assert the Donegall title.

The rent for the new lease was raised from £369 4s. 7d. to £884 4s. 7d. By this means Lord Shaftesbury, as the heir to the Donegall interests, gained an increase of over £500 a year. A few months later the lessees sub-let to others at a rent of £2,550 a year. Then in 1907, an action claiming an injunction to restrain the public from fishing in the Lough for eel was begun in the Chancery Division by the sub-lessees. Thus war was declared for the second time against the claim of public right.

Doubtless when the new Lease was made, all concerned conceived that the elements of a " good gamble " existed. Beyond whatever law costs were involved, no one but the public could suffer by the result. That public consisted only of noteless fishermen, so poor and unbefriended that their starvation would merely add a column to the statistics of the local workhouse. Defeat would leave the lessees where they were. Victory would enormously enhance the value of their fishery in the Bann. The changeling transformation, which turned 900 independent fishermen into serfs, *taillables et corvéables à merci*, could work only to the exaltation of their new masters. So Bristow's example was studied and improved on.

In this enterprise, as the judgment of Lord Robson afterwards pointed out, Lord Shaftesbury gave his lessees no covenant for title or " quiet enjoyment," except as regards his own acts. He risked nothing, while victory assured him of an increased rent of over £500 a year. If the action failed he was no worse off. The stake of the lessees consisted only in the costs of the legal venture—say, £3,000—against the prospect of winning the largest lake in the Three Kingdoms.

Lord Shaftesbury, standing in the shoes of the Marquis of Donegall his grandfather, determined, therefore, to accept a Surrender of the old Bann lease of 1827, and to give a re-grant, including Lough Neagh.

Thus, in the twentieth century a new page in the history of the Ulster Plantation was opened.

Those representing the Donegall interest had, however, long brooded over the acquisition of the Lough. They were concerting action years before Lord Shaftesbury came of age or the pretext of eel-netting was availed of. The official date-stamp on the certified copies of many of the records put in evidence on behalf of those opposing public right was over twenty years old. That on the office-copy of the Patent of Charles II. bore date the 7th March, 1889 (O'N., *v.* J., 202).

CHAPTER XLV.

A FORGED LEASE.

On the 9th February, 1907, Lord Shaftesbury's sub-lessees, upon the strength of their new grant, issued a writ to restrain eel fishing by the public in Lough Neagh.

The former proceeding had been a Common Law action for trespass. The second suit was launched in the Chancery Division, so that it might be decided without a jury. It was tried in Dublin in 1908 by Mr. Justice Ross (M.P. for Derry, 1892-5), the Judge of the Landed Estates Court sitting for the Master of the Rolls. In this trial the secret of the abandonment of Bristow's action was revealed, for the lease to May had to be produced. Since the previous action, however, its evidential value had changed. At the first trial its production was adjudged by the Lords to be indispensable, because there were two legal problems under discussion—a "part and parcel" question and a "title" question. The issue of fact as to whether Crommelin's grant included Lough Neagh had first to be settled in 1874-8, and then, if it was held that the Lough had been demised to Crommelin, the issue of law arose as to whether Lord Donegall possessed title to make such a grant. When his grandson, Lord Shaftesbury, in 1905 undoubtedly made a lease of Lough Neagh, the issue of fact disappeared, and May's grant ranked merely as an "act of ownership." But though its effect on the case was no longer vital, its suppression a second time was impossible. In Bristow's action, the Lords had expressed doubt whether, if produced, it would bear out the recital contained in Hill's lease—viz. that it included Lough Neagh. Its production in the new litigation

was therefore inevitable; and accordingly it was put in evidence.

When tendered in Court "May's lease" did indeed include Lough Neagh as well as the Bann; but it was also clear that the scroll had been tampered with. A single glance revealed that, wherever "Lough Neagh" was mentioned, the words were inserted over erasures. The lease, as originally drawn, had only demised the Bann; and the grant of Lough Neagh was visibly and undeniably an addition made after its engrossment. The aspect of the parchment thus furnished an eloquent explanation of its suppression in Bristow's case.

Apologists for its plight, of course, were forthcoming, and a new issue arose: Had the document been falsified after execution—or were the alterations effected before it was signed, in consequence of some innocent change of intention in the interval between engrossment and execution?

Where alterations appear in a legal document, the practice of conveyancers is to note them in the Attestation Clause; but in May's lease no such note exists. If changes so enormously important as the addition of Lough Neagh to a Lease of the Bann, were innocently made, the neglect to record them on the Deed by the solicitor concerned, would involve a degree of carelessness little short of criminal. Still, legal presumption trends in favour of regularity; and though to hold that this presumption covered a case affecting the largest lake in the Three Kingdoms would be somewhat stretching it, the presumption exists, and, therefore, those who allege falsification must bear the onus of express proof.

Fortunately such proof exists under the Irish Registry Act. For in 1805 May's lease had been registered in the Dublin Registry of Deeds. The procedure of registration involves the lodgment in the Registry of a "Memorial" of the instrument, executed by one of the parties. The Act requires that this Memorial shall set forth the lands or premises which are being dealt with "in such manner as the same are expressed or mentioned" in the instrument to be registered, "or to the same effect."

May's lease might be falsified, but the Memorial was a public record which could not be tampered with. It was

therefore examined, and what was the result ? Seldom has so significant a disclosure been so simply brought to light. For the Memorial contained no reference whatever to Lough Neagh. By an amazing vacuum, the principal subject-matter of the supposed demise was conspicuously absent ; and thus May's lease of 1803 was proved to have been confined to the Bann. Forgery was, therefore, clearly demonstrated.

The minor discrepancies between the Memorial and the lease are almost as significant as the main falsifications.

The lease in its original form contained a grant to Edward May, not only of the salmon, but of the " soil " of the Bann. To alter this by adding a grant of the " soil " of Lough Neagh probably seemed a " large order," as affecting many square miles of territory. At any rate, the forgers shrank from making the change, and this omission greatly assists detection. For while the Memorial avers that the genuine instrument granted Edward May the " soil " of the Bann, the ill-cooked parchment served up in Court included no such grant. On the other hand, while the forgers reduced the nature of the grant as to " soil," they enlarged it in another direction. Thus, instead of being confined to " salmon," it was extended to all " scale " fish. The Memorial is as follows :

" No. 386629.

" To the Registrar appointed by Act of Parliament for registering Deeds, etc.

" A Memorial of an Indenture of Lease bearing date the first day of October, 1803, and made between the Most Honourable George Augustus, Marquis of Donegall, of the one part, and Edward May, of Belfast in the County of Antrim, Esqre., of the other part.

" By which said Indenture the said Marquis of Donegall did demise and set unto the said Edward May, his exors., admors., and assigns., ALL THAT the salmon fishery and soil of the River Bann, with full right and liberty of taking and carrying away and exporting of salmon fish, with the appurtenances in the Counties of Tyrone, Antrim, and Liberties of Coleraine and the precincts thereof.

"Together with full power of going to the Bank of said river and every part thereof within the aforesaid limits, and of laying thereon nets and other necessary implements for fishing, together with all and singular the weirs, dams, water-courses, advantages and appurtenances to the said fishery belonging or appertaining and usually enjoyed therewith.

"For the purpose of catching salmon within the known and accustomed limits of the said fishery, with full liberty in the said river Bann and within the limits aforesaid to catch and take salmon at all seasonable times, and to sell and dispose thereof.

"To HOLD unto the said Edward May, his exors., admors., and assigns., for the term of 61 years commencing from the 1st of November then last, subject to the yearly rent of £50 sterling, payable half-yearly, above taxes.

"Which said lease is witnessed by

JOHN HAMILTON, junior,
CHARLES O'DONNELL and
JAMES M'COY,

all of Belfast aforesaid, gents."

"And this Memorial is witnessed by the said Charles O'Donnell and James M'Coy and John Hamilton, junr.

"DONEGALL
(Seal.)

Signed and sealed in the presence of
JAMES M'COY,
JOHN HAMILTON, junr.
CHARLES O'DONNELL.

"The above-named John Hamilton maketh oath and saith that he is a subscribing witness to the Indenture of Lease of which the above writing is a Memorial, duly executed by the above-named George Augustus, Marquis of Donegall; and Deponent saith the name John Hamilton, Junr., subscribed as a witness to the said lease and Memorial is this Deponent's name and handwriting.

JOHN HAMILTON.

"Sworn before me this 10th day of July, 1805, at Belfast in the County of Antrim, by virtue of a Commission to me directed for taking affidavits, in the said County; and I know Dept.

CHARLES O'DONNELL.

"Registered 30th August, 1805, at ½ after 11 o'clock."

The lease, as altered, will now be reproduced in its granting part side by side with the Memorial, in order that they may be contrasted:

LEASE.

"All that the salmon, trout, and Scale Fisherys of Lough Neagh and the River Bann, with liberty of taking and carrying away and exporting of such fish, with the appurtenances, in the Countys of Tyrone, Antrim, and Liberties of Coleraine, and the precincts thereof, together with full power of going to the Banks of said Lough and River, and every part thereof, within the aforesaid limits, and of laying thereon nets and other necessary implements for fishing, together with all and singular the weirs, dams, water-courses, rights, privileges, commodities, advantages, and appurtenances to the said Fisherys belonging or appertaining and usually enjoyed therewith, for the purpose of catching and taking salmon and other fish, within the

MEMORIAL.

"All that the Salmon Fishery and soil of the River Bann, with full right and liberty of taking and carrying away and exporting of Salmon Fish, with the appurtenances, in the County of Tyrone, Antrim, and Liberties of Coleraine, and the precincts thereof, together with full power of going to the bank of said River, and every part thereof, within the aforesaid limits, and of laying thereon nets and other necessary implements for fishing, together with all and singular the weirs, dams, water-courses, rights, privileges, commodities, advantages, and appurtenances to the said Fishery belonging or appertaining and usually enjoyed therewith, for the purpose of catching and taking salmon within the known and accustomed limits of said

Lease.	Memorial.
known and accustomed limits of said Fisherys, with full liberty in the said Lough and River, and within the limits aforesaid, to catch and take salmon, trout, and scale fish, at all seasonable times, and to sell and dispose thereof."	Fishery, with full liberty in the said River Bann and within the aforesaid, to catch and take salmon at all seasonable times, and to sell and dispose thereof."

There were further alterations in the body of the lease, to make the forgery conformable to the antecedent changes, but as these cannot be checked or exposed by reference to the Memorial (which only contains granting words) they are not set out.

Since 1707 the development of registration in Ireland has made the Registry of Deeds one of the most important Departments in the business and legal life of the country. It touches the humblest peasant as well as the wealthiest mortgagee. Any decision throwing doubt on the effectiveness of registration, or the potency of its processes to test the genuineness and validity of deeds, would strike a blow at the security and settlement of property—not only in Ireland, but in Middlesex and Yorkshire, where analogous Registration Acts are in force.

Registration secures for a Deed priority over any subsequent instrument dealing with the same property. It enables investigators to ascertain whether there has been any disposition or dealing with the property; and also to detect, by comparison of the Deed with the Memorial, whether any document purporting to be an original has been tampered with. If the "parcels" set out in the Memorial differ from those in the Deed from which it has been abstracted, foul play may justly be suspected, unless some cogent explanation is forthcoming.

A presumption in favour of the correctness of a Memorial should prevent excuses being accepted, which might sap public confidence in a system that has stood the test of centuries, and on which rich and poor alike must rely.

The impartial inquirer will therefore ask himself which document is likely to be more faithworthy—the intact Memorial, preserved by the Government, or the hacked and tesselated parchment, pitted with erasures, coming from interested custody. The question of forgery or of lawless erasure is one to be decided, not merely by interlineations and differences of handwriting, but by comparing the words of the Lease with those of the Memorial, and noting the variances between them. What is the effect of these variances, and where do they occur ? They occur where interlineations have been inserted over erasures on the parchment, and their effect vitally changes the construction of the Lease.

The Memorial certifies that the Lease was a demise of a salmon fishery only. The Lease grants a fishery of trout and all " scale " fish, as well as salmon.

The Memorial avers that the Lease relates to a fishery confined to the River Bann. The Lease extends the fishery to Lough Neagh as well. By this means a lake 20 miles long, and 8 or 10 miles wide and 100,000 acres in extent, was added to the grant of the Bann, while a much larger right to take fish in both waters was also conferred.

The " soil " of the river is declared by the Memorial to have been part of the demise. This striking and unusual grant is omitted from the Lease.

Changes of detail (such as " banks " for " bank," " fisherys " for " fishery," " Countys " for " County ") pursue the draftsman into minor phrases. In all, some 14 differences, great and small, exist between the Memorial and the Lease, without reckoning a strange phenomenon connected with the Attestation Clause, which will be mentioned later. These changes make fundamental and irreconcileable differences between the scope and meaning of the Memorial and that of the Lease.

The variance as to the " soil " of the Bann, although intrinsically not of great moment, becomes of special importance, as contradicting every explanation of these inconsistencies, so far devised. For it baffles theory to offer any adequate explanation of the omission from the Lease of a

grant of a peculiar nature, which the Memorial shows it to have contained. The demise of the " soil " of the Bann is proved by the Memorial to have been in the original Lease, whereas it is totally absent from the parchment put in evidence as the original. Had the Lease contained such a grant, and if this had been left out of the Memorial, the suggestion of miscopying or negligence might seem plausible.

A " minus " but not a " plus " fits in with the theory of carelessness, availed of as the excuse to account for the gigantic omission of Lough Neagh from the Memorial. That omission was alleged to be due to the possible negligence of a clerk. But what can explain the presence in the Memorial of a grant of " soil " missing from the lease ? No converse theory of clerkly oversight is tenable. A reckless copyist might (theoretically speaking) drop out any mention of the largest lake in the Three Kingdoms, from a Memorial purporting to give the contents of the grant in the Lease which conveyed it. An incompetent solicitor might fail to correct a Memorial marred by so extraordinary a defect. A purblind lessor might sign and seal the faulty Memorial without intending to wrong his brother-in-law. The Registrar of Deeds (bound in a £20,000 recognisance for fidelity in the discharge of his duty) might fail, when accepting the Lease for registration, to compare its terms with those of the Memorial. All the intractable strains in crabbed human nature may have conspired to injure Edward May, by the clumsy and unaccountable omission of the main subject-matter of his Lease (Lough Neagh) from the description of its contents in the Memorial, coupled with the failure of every person interested to notice the fact. Such blundering is possible—although, where so many people were concerned in the transaction, and the omission affected the title to a vast inland sea, it does not seem probable.

But what can account for the imaginativeness of a scrivener who, of his malice aforethought, alleged in the Memorial what was false in fact—namely, that the Lease embraced a demise of the " soil " of the Bann ? Here is no omission, but a substantive averment. Could this have originated in the thoughtlessness of an attorney's clerk ?

What drudge, employed to make an extract of the granting words in a lease, would invent and insert in such extract (viz. the Memorial), a peculiar demise of property which the Lease never contained ? What trained solicitor would have passed or committed such a blunder ? As well evoke in explanation the doctrine of " spontaneous generation," as the sorry story of the heedlessness of a copyist.

If such a grant appeared as an error in the Memorial, Lord Donegall when he was signing it had the assistance of solicitors and others, whose duty it was to compare the Memorial with the Lease. Persons in the position of a Marquis are usually well-served by the lawyers who furnish them with bills of costs.

The law then in force as to the registration of Deeds is so simple that it can be made plain even to those least skilled in conveyancing. Ireland, like Middlesex and Yorkshire, possesses a Government Department for the Registration of Deeds, created in 1707 under the Act 6th Anne, c. 2. One of the objects of the Act (as its Preamble recites) is the prevention of forgeries. In the two centuries which have elapsed since the Registry was established, its utility in the detection of crime was never more effectively demonstrated than in the case of the lease to Edward May.

The Preamble reads to-day a little quaintly ; but it sets forth clearly the purpose which registration was intended to effect :

" For securing purchasers, preventing forgeries and fraudulent gifts and conveyances of lands, tenements and hereditaments, which have been frequently practised in this kingdom, especially by Papists, to the great prejudice of the Protestant interest thereof, and for settling and establishing a certain method, with proper rules and directions for registering a memorial of all deeds and conveyances, etc."

Section 6 prescribes the form of the Memorial which is to be lodged as evidence of the Deed to be registered :

" Every Memorial . . . shall be put into writing in vellum or parchment, and directed to the Register . . . under the hand and seal of some or one of the grantors or . . . grantees . . . attested by two witnesses, one whereof to be one of the

witnesses to the execution of such deed or conveyance; which witness shall, by affidavit, . . . prove the signing and sealing of such Memorial, and the execution of the deed or conveyance, mentioned in such Memorial," etc.

Section 7 provides that the substance of the Deed is to be contained in the Memorial:

"Every Memorial . . . shall express and mention the honours, manors, lands, tenements, or hereditaments contained in such deed, conveyance or will, and the names of all the counties, baronies, cities, towns corporate, parishes, townships, hamlets, villages, precincts, within this kingdom, where any such honours, manors, lands, tenements, or hereditaments are lying and being, that are given, granted, conveyed, devised, or in any way affected or charged by any deed, conveyance, or will, in such manner as the same are expressed or mentioned in such deed, conveyance, or will, or to the same effect."

Section 8 enacted that the Registrar should take an oath for the faithful performance of his duty, and "at the time of his being sworn into the said office, shall also enter into a recognizance with two or more sufficient sureties . . . of the penalty of £20,000," etc.

Such was the state of the law in 1805, when May's lease was presented for registration.

Illegal meddling with a lease, registered under the Registration of Deeds Act, is a serious business; and Judges, who take on themselves the functions of jurors, are naturally slow to conclude that forgery has been committed. This, however, was a case, not of a single erasure, but of a dozen; and the alterations were of a kind which showed they could not have arisen from accident or mistake. Three judges tried to explain them—Mr. Justice Ross in the Court of first instance, Lords Macnaghten and Dunedin in the House of Lords. Their reasoning must be taken to represent everything that could be mustered on behalf of what Lord Macnaghten called "this unhappy document."

Judge Ross said—"A point was made by counsel for the defendants, that in the lease of 1803 the words 'Lough Neagh' are written on an erasure, and that, in the Memorial, Lough

Neagh does not appear at all, but only the River Bann. On consideration, I think there is nothing in the point, because, down to 1834, the Deeds and Memorials were not compared by the officials in the office ; and further, the lease of 1803 was surrendered ; and, by the lease of 1811, Lough Neagh was expressly demised."

Judge Ross's theory, therefore, is that the lease was innocently altered before execution ; but that Lord Donegall's solicitor, in preparing the Memorial two years later, neglected to make it correspond with the alterations grinning through the erasures. If the lease of 1803 had been registered forthwith this might perhaps be barely tenable. But the registration did not take place until 1805, and it is hard to suppose that, in preparing the Memorial, the scrivener omitted from it the very things which the erasures and interlineations in the lease called special attention to. Nay, more ; that the registering official in Dublin was equally guilty, and neglected his most important duty—that of comparing the description of the premises in the lease, with that contained in the Memorial, before accepting it for registration.

This theory, however, afterwards won the approval of two of the Law Lords. Yet it is so lame and halting that it can be shown to require the assistance of the crutch of credulity at seven stages. Scepticism at any one of them gives it a death-blow. To adopt it, it is necessary to believe :

1st. That the Marquis of Donegall only thought of making the grant of Lough Neagh, after the lease of the Bann had been engrossed for execution.

2nd. That at the same eleventh hour, the Marquis determined to enlarge the nature of the fishery from " salmon " to all " scale " fish.

3rd. That the solicitor who was instructed to insert Lough Neagh, after the lease was engrossed, forgot to note this gigantic change in the Attestation Clause, although by long-established practice the most trivial interlineations are always so recorded.

4th. That the same solicitor forgot to note the omission of the " soil " of the Bann from the Lease, and the enlargement of the fishery to include all " scale " fish as well as salmon.

5th. That this solicitor two years later, when preparing the Memorial, again forgot to mention therein either Lough Neagh or any of the other changes made in the Lease, despite the fact that the erasures and interlineations would fasten special attention on the necessity of embodying them in the Memorial.

6th. That the Registrar of Deeds also neglected his duty to compare the " parcels " in the altered lease with those in the Memorial, although his attention likewise would be arrested by the interlineations, if he looked at the Lease.

7th. That the suppression of the Lease in Bristow's case was the result of like inadvertence or carelessness.

If such difficulties confronted a prisoner arraigned for forging bank-notes, or his defence required the acceptance by a jury of such a series of coincidences, his acquittal would hardly delight the public.

The view of Judge Ross, that official comparison did not take place in former times, can be shown to be mistaken. The terms of the 19th Section of the Registry Act of 1832 led to this misconception. This Section (2 and 3 W. IV. c. 87) provides that " Every Memorial brought into the said Office, to be registered, shall be there compared with the instrument of which it purports to be a Memorial." This led Judge Ross to infer that there had previously been no comparison. That this was wrong can easily be established.

True it is that the Registry officials, down to the passing of the Registry Act of 1832, did not guarantee a comparison between the entire of the Memorial and the entire of the Deed ; but they did compare them on three cardinal points, viz., date, parties, and premises. As to these matters, a Memorial made before the Act is as good evidence of the contents of a Deed as one made afterwards.

The Report of the Select Committee of the House of Commons in 1832, on which the Act was founded, and the evidence of the Registrar then given, state the former practice. The Report informs Parliament that : " Memorials are now but partially compared with the deeds of which they purport to give the contents. The Registrar is responsible only for the names of the parties, the name and situation of the premises,

and the date of the deed being correctly stated. Every other particular stated in the Memorial may be false, or not supported by the instrument."

This report was made after hearing the evidence of officials, including the principal Registrar, Mr. Moore, K.C., who had then nearly forty years' service ; and was actually Deputy Registrar in 1805, when May's lease was presented for registration (S.D.A., 73). Mr. Moore testified :

" The Memorials so authenticated . . . are subsequently examined to see that they contain the requisites prescribed by the Registry Act . . . which are : A correspondence between the date, the parties' names, and the lands mentioned in the Memorial, and those in the deed. When the title of the Memorial to registry is thus ascertained, it is entered in what is called the Day Book."

So the Legislature in 1832 was advised on the highest authority that the Registrar held himself responsible that each Memorial should correctly show the names of the parties, the names and situation of the premises, and the date of the grant, and that this was secured by a " partial comparison," limited to these three points. These points however are exactly the three on which the Memorial of May's lease is cited to prove the forgery—namely, the nature and date of the grant and the names of the parties.

Thus, seventy-six years before Mr. Justice Ross had occasion to consider the olden practice, the Report of a Parliamentary Committee and the evidence of the Registrar of 1805 refuted in advance the conclusion he arrived at.

They establish that there was a comparison of the lease signed by Lord Donegall in 1803 with the Memorial signed by Lord Donegall in 1805, as to the property thereby granted to Edward May. In other words, the Memorial affords statutory proof that Lord Donegall, on the 1st October, 1803, made to Edward May a lease of the salmon fishery in the Bann, with the soil thereof, and nothing else.

Furthermore, no fancied neglect of Registration officials can dispose of the fact that the Memorial was signed by Lord Donegall himself, and, being intact, is more faithworthy than a garbled lease. The lessor's signature alone gave each

document legal value. The Memorial was inviolate, the Lease was disfigured by erasures and interlineations, without marginal justification. Lord Donegall's lawyers, who prepared the Memorial, and Lord Donegall himself must be assumed to have known what they were doing when they framed it to set forth that the Lease only granted the salmon fishing in the Bann and therewith gave the " soil " of the river. The Memorial, therefore, is a better-accredited act of Lord Donegall's than the Lease, and cannot be discredited by imputing to the Registry officials a failure to compare it therewith. Accordingly it must be regarded as of the highest evidential worth, irrespective of whether or not it was subsequently compared with the Lease by a Government official.

To the riddle the lease presents, no answer can be proffered —except one, viz., That the Memorial is a Memorial of a genuine lease made to Edward May by his brother-in-law, Lord Donegall, but that such genuine lease was not the parchment produced in evidence. The plaintiffs, who produced May's lease in 1907, were not responsible for its plight, as the document had never been in the custody of their advisers. The forgers are dead, and their secret has died with them ; but, even in its mauled and patched condition, there are difficulties in the way of accepting " the unhappy document " as the first edition of the forgery.

Some secondary trickery must also have been practised. This strikes the inquirer when the Attestation Clause of the so-called lease is examined. There, an additional repugnancy of the strangest kind is disclosed, and one of a nature which places the forgery beyond the possibility of dispute. It does not depend on erasure or interlineation, nor does it add to, or subtract from, anything granted by the lease. It concerns the method by which Lord Donegall's signature was witnessed.

The Memorial certifies that there were three witnesses to Lord Donegall's signature in the original Lease, and declares their names and addresses. The " unhappy document " bears the signature of only two witnesses, although purporting to be the veritable parchment which the Memorial shows

to have had three witnesses. The accuracy of the Memorial as to this, finds unexpected corroboration from the Memorial of the Quarry Lease. Both the Fishery Lease and the Quarry Lease were made to Edward May on the same day, and were registered at the same hour. The Memorial of the Quarry Lease shows that it was also witnessed by three persons, and these persons were the same three who are declared, by the Memorial of the Fishery Lease, to have witnessed that lease. The omission of the name and address of one of them (James M'Coy of Belfast) from the alleged original Fishery Lease is therefore an added proof piled up to repel the remotest pretension of its genuineness.

A witness to each lease, John Hamilton, was (as the Statute prescribes) a subscribing witness to the Memorials of both the Quarry and the Fishery Leases. Hamilton made the verifying affidavit in each case.

The Memorial of the Fishery Lease avers that this lease was witnessed by

JOHN HAMILTON, Junior.
CHARLES O'DONNELL, and
JAMES M'COY.

In the Memorial itself Lord Donegall's signature is witnessed by the same three persons. The parchment, produced as the original Fishery Lease, is signed only by

JOHN HAMILTON, Junior, and
CHARLES O'DONNELL.

If this stood alone, no stronger proof of forgery could exist. For how, when, and why did the signature of James M'Coy disappear from the "original" lease? Its absence is unaccountable. M'Coy's name appears as a witness on several of the fifty memorials of deeds made by May between 1803 and 1812. It would appear that he was an attorney's clerk, and therefore a natural person to be availed of as a witness.

The phrase in the Memorial, as to the witnesses to the lease being "all of Belfast," would also not have been employed to indicate two signatories merely. "Both of Belfast," not "all," would be the apt words used to denote two persons. "All of Belfast" implies that the witnesses to the lease

numbered more than two. This touch of grammatical corroboration is mark-worthy.

If the original of the Quarry Lease had been produced, it might have thrown some light on the mystery ; but, throughout the two litigations, neither the existence of the Quarry Lease nor the relationship between Edward May and Lord Donegall was made known.

The suit was one in which the Plaintiffs, by means of copies of the copies of deeds in the Irish Record Office, were trying to prove the Donegall title to Lough Neagh. The Record Office offers no guarantee of the accuracy of the original engrossment of Patents, Inquisitions, or Commissions enrolled in Chancery hundreds of years ago. Extracts from them are properly receivable in evidence ; and, therefore, if a much more modern record like the Memorial, lodged under Statute in the Registry of Deeds, and signed by Lord Donegall himself, were discredited, a strange inconsistency in practice would arise.

CHAPTER XLVI.

LORD SHAFTESBURY WINS.

The question of the forged Lease was however only one element in the trial. Hence Judge Ross laid stress on the contingent branch of his reasoning, viz. that even if May's lease were a forgery, the fact was immaterial, because it "was surrendered, and by the lease of 1811 Lough Neagh was expressly demised." Yet this was what the House of Lords negatived in 1878. Although well aware of the Surrender, Lord Chancellor Cairns, Lord Hatherley, and Lord Blackburn in turn laid down that, in order to interpret the grant to Hill, the lease of 1803 to May must be resorted to. Hill's lease only demised a fishery "as late in the tenure of the Rev. Edward May by virtue of the lease of 1803." If, therefore, May did not then enjoy a grant of Lough Neagh, neither could Hill; for Hill got nothing save what May then held. The judgment of the Lords in 1878 upon this issue is decisive.

On all other matters Mr. Justice Ross also decided adversely to the fishermen.

It is only fair to the learned judge, and the other eminent men who afterwards heard the appeal from his decision, to make clear that most of the facts related in this narrative were not then known, and are now presented for the first time as the result of subsequent research. Had the documents which have since come to light been in evidence, small weight would have attached to the tainted records which they qualify or refute. The history of the O'Neill Patents, of the Wakeman-Irelande-Bassett-Hamilton scandals, of Chichester's surrender in 1611, of the consequent worthless-

ness of the Crown Rental of 1619, the trickery of 1621 connected with the Derry Inquisition and those of Carrickfergus and Lifford, when title was laid to the Bann and to the Lough Foyle salmon previously surrendered, the character of the jurors empanelled to abet Chichester, the condemnation by the Exchequer Barons of the Wakeman Patents in 1623, the considerations affecting Edward Chichester's Patent of 1640, the swindling of Cromwell by Clotworthy as to the Bann in 1656, the frame of the King's Letters in limiting the patents, the method of Lord Donegall's fraud on Charles II., and the design throughout to cheat the Londoners as to the river—none of these things was known by any tribunal. The reason is self-evident. They required the investigation of an archivist, and lie quite beyond the scope and duty of ordinary legal research.

An archivist was retained for the Plaintiff on whose accuracy implicit reliance was placed. He presented a legal history of Lough Neagh between 1605 and 1662, but omitted the master-patent relating thereto (Bassett's) and everything affecting the Bann. This fastidious exclusion of all documents relating solely to the river, withheld Chichester's frailties from observation and screened the infirmities of his title. Yet, while the case of the Bann remained in twilight, it was contended that river and Lough were *unum quid*. The allegation that no Patent existed dealing with Lough Neagh other than those enumerated in the affidavit of this archivist, is the more inexplicable as he twice indicates in the " exhibits " the issue of a Patent to Bassett. The King's Letters which form the only authority for the grants were also entirely omitted. His affidavit, sworn on behalf of the Plaintiffs on the 5th July, 1907, avers :

" I, George Dames Burtchaell, M.A., LL.B., of No. 44 Morehampton road, Dublin, make oath and say :

" 1.—I am a Barrister-at-Law and am Secretary to Ulster King of Arms in Ireland at Dublin Castle.

" 2.—I have had large experience in making searches and inquiries in genealogies, and am thoroughly acquainted with the Public Record Office, and searches there. I have also

had large experience in translating Patents and grants in Latin.

" 3.—I have made a search from the year 1600 to the year 1662 for all Inquisitions, Patents, and Grants of Fisheries in Lough Neagh. The *only* Inquisitions, Patents and Grants there, are those in the following list :

(1) 1605—14th February—Patent to James Hamilton.
(2) 1605—12th July—Enrolment of Inquisition holden at Antrim.
(3) 1619—Extract from Crown Rental, Antrim.
(4) 1621—6th April—Inquisition (Chancery) Co. Antrim.
(5) 1621—November 20th—Grant to Arthur Lord Chichister, 19th James I.
(6) 1640—July 1st—Surrender of Edward Viscount Chichester, and Arthur Chichester, his son and heir apparent.
(7) Lease from Oliver Cromwell to Sir John Clotworthy to hold from 13th May, 1656.
(8) 1660—15th November—Crown lease to Sir John Clotworthy.
(9) Extract from Crown Rental, 1659.
(10) Extract from Crown Rent Receipt Book, 1660.
(11) 1661—July 3rd—Grant to Earl of Donegall of Fishings in Lough Neagh. Patent Roll 13, cap. 11, pt. 3.

. . . . . .

" I am satisfied that there are no inquisitions, patents or grants, other than those above referred to, dealing with the Fisheries in Lough Neagh " . . . (O'N. *v.* J., 26).

Thus the King's Letters, and stranger still Bassett's Patent which was the real root of Chichester's title, were altogether omitted. Bassett's Patent is to be found in the Calendar of James I., published officially by the Record Commissioners, while an extract from it relating to both Lough Neagh and the Bann is given in the State Papers. Its enrolment in the Irish Record Office remains in ink as fresh as on the day it was made. In the same affidavit the rent payable to the Crown under Chichester's Patent of 1621 was set forth (in

two separate places) as " £920 " (O'N. *v.* J., 42) instead of £33. This was a sum so considerable in those days as to repel the idea that a want of genuineness could attach to such a grant.

It was therefore perhaps inevitable that Mr. Justice Ross should have supposed that the farrago of imposition, concocted by the Chichesters, lent countenance to the Patent of 1662, on which the House of Lords in 1878 refused to act. These documents, moreover, underwent no comparison with the King's Letters, and so were not unnaturally accepted at their face value. They seemed to present a buttress of corroboration lacking in the previous case ; and the learned Judge accordingly relied on them to distinguish it from Bristow's. His reasons were thus summed up :

" The case made by the plaintiffs in this action is far more complete in every way. Lord Cairns called attention to the want of evidence of seisin in the Crown at the time of the Patents. The Patents purported to grant the land, and this of itself is some evidence ; but it is plain that the additional evidence brought forward in this action is of immense importance.

" There are the following additional documents, none of which were in evidence in Bristow *v.* Cormican (I.R. 10 C.L., 398).

(1) The Commission for the Inquisition of Antrim, 1605 ;
(2) The Inquisition consequent thereon, 1605 ;
(3) The Patent to Hamilton, 1605 ;
(4) The Crown Rental of 1619 ;
(5) The Commission of 1621 ;
(6) The Inquisition of Carrickfergus, 6th April, 1621 ;
(7) The Patent, 20th November, 1621, King James to Lord Chichester ;
(8) Commission of King Charles I., 21st October, 1639, to take a Surrender from Chichester ;
(9) Surrender from Chichester and his son, 1st July, 1640 ;
(10) Cromwell's lease to Clotworthy, 14th August, 1655 ;
(11) The lease to May, 1803 ;

(12) Rentals of Donegall estate, 1775 to 1817 ;

(13) The leases and documents dealing with the eel fishings in the Bann.

" Then we have the actions and proceedings that have been taken to establish plaintiff's right under the Patents to the eel fishings on the Bann. The Commission and Inquisition of 1621, now in evidence, I regard as of great weight. Here we have a King's Commission addressed to reputable and distinguished persons, commanding them to ascertain with precision of what property the Crown was seized. We have the Inquisition following promptly upon the Commissions ascertaining the particulars of the property, and then comes the Patent, following the Inquisition with the greatest minuteness.

" Mr. Healy with great force tried to persuade me that I am to look upon this as mere stage business, and that I am to look upon the Commissions, Inquisitions and Patents as so much paper, because it does not appear in what way the property found its way into the Crown, whether by surrender, attainder, escheat, or forfeiture. The Plaintiffs, however, cannot be expected to prove this. We must assume that sufficient evidence was given upon which the findings of the Inquisition were founded ; and I think, considering the distance in point of time, I am warranted in adopting in the first instance the conclusion solemnly arrived at and attested, and that the soil of the whole Lough and river, and the fishings, were vested in the Crown prior to the Patent of Charles II."

The Judge was also influenced by the fact that former tribunals had been allowed to accept unchallenged Chichester's title to the Bann, which depended on the same deeds as concern Lough Neagh. Patents, such as that of 1621, to which " great weight " was attached, were not met by the production of Chichester's surrender of the Bann and Lough Foyle in 1611. That surrender was unknown, as was the fact that, since the Bann had been given by Charter in 1613 to the Londoners, no subsequent instrument deprived them of it before 1621. Accordingly the Inquisition of that year at Carrickfergus was treated as a solemn and legal pro-

ceeding, instead of being merely a contrivance to cheat the Londoners behind their backs.

A story, three centuries long, would have been necessary to explain the disconnected parchments put in evidence, and it could not have been told when the buried materials still lay underground. The workings of the two Plantations and their rivalries, which few could be expected to retain, and the mechanical procedure of confiscation, which for most purposes has, happily, long been dead law, required to be understood. The Londoners themselves were supine and unskilled as to the extent of their Charters, and even ransomed part of their rights at a high price from Lord Donegall's lessee in 1872, when they abandoned ejectment proceedings to recover the Bann, belatedly instituted in 1868 (I.R., 2 C.L., 325). It is therefore hardly wonderful that others less interested should be ignorant, or should lack dissecting power to explore the bearing of inconsistent patents.

The effect of the "additional documents," produced in the second litigation, is seen in the reasoning by which the decision of the House of Lords in 1878 was set at naught. It penetrates through every judgment, from the court of first instance to the final tribunal. Nothing to discredit them seemed possible. Still, in neither suit were the plaintiffs able to produce the original of any Patent. They adopted the expedient of disembalming from the Record Office any entries appearing to assist their case, and selecting bits from each. Certified copies of portions of enrolments did duty for the complete text of the documents. The dates of certification show that, in Bristow's action, the plaintiff was in possession of many of them, and that they could then have been given in evidence had they been deemed worth using. Instruments, discarded as inconclusive or unproduceable in 1874-8, were treated as the cornerstone of the edifice in 1907-11.

When Irish History becomes a branch of Irish learning, such muniments will command small authority. It will also, by that time, probably be recognised that the "reputable and distinguished persons," who, according to Judge Ross, composed the Commission of 1621, included the choicest scoundrels in Europe.

The view of the Irish Court of Appeal as to the Chichester Patents was the same as that of Mr. Justice Ross.

Lord Justice Holmes said :

" The Plaintiffs have evidently acted on Lord Blackburn's hint that, although recitals in old documents are no evidence of what is recited, they may put the parties on the track as to where to look for evidence of the truth ; and the result has been that ten instruments having an important bearing on the issue, and all prior to 1660, are included in the proofs given at the hearing in the Divisional Court. . . . Having some experience of Ulster titles, I have been surprised to find that of King Charles II. to the fisheries of Lough Neagh and the Bann at the date of the Patent of 1661 so satisfactorily supported by earlier instruments."

Thus did the Right Rev. Miler Magrath find his apotheosis.

Lord Justice FitzGibbon was also impressed by the larger array of documents :

" The Plaintiffs' case is much stronger now than it was then. . . . These additional documents displace some, and they weaken all, of the unfavourable observations made in the Irish Courts, and in the House of Lords, upon the documentary title to the bed and soil and fisheries of Lough Neagh as then in evidence. . . . Much of Mr. Healy's argument was directed to show, historically, that the Crown had no actual possession of Lough Neagh in the reigns of Elizabeth and James I., and he sought to account for the restriction of the finding, that a part only was vested in Queen Elizabeth, by suggesting that the possession of the rest was then governed by the law of tanistry, or by patriarchal Celtic customs by which the still unconquered chiefs held the Lough as trustees for the public, or subject to public rights of fishing, of which he suggested that the fishing by the defendants was in some way a survival. . . . Granting that some of the counties adjoining Lough Neagh were among the last to be brought under English rule, I have never before heard it suggested that the possession of Irish land could be governed otherwise than by the laws of the Irish Parliament, and of the United Kingdom. . . . I cannot believe that all the documents of title in the case rest upon usurpation or pre-

tence, or that the possession under them has been wrongful, or that it has not extended to Lough Neagh, as well as to the Bann. . . . and that all the Inquisitions, Patents, and other documents which purported to deal with the whole Lough were illusory and void, and only ' pretenced titles.' "

Doubtless a lapse in the scholarly lore of the late Lord Justice FitzGibbon caused him to say that he " never before heard that the possession of Irish land could be governed otherwise than by the laws of the Irish Parliament and of the United Kingdom." In the previous trial (B. *v.* C.) Judge Fitzgerald (afterwards a Lord of Appeal) laid down, on the 12th May, 1877, in the Exchequer Chamber, that the Patent of 1661 to Lord Donegall " should be also interpreted as subject to the then existing rights."

Chief Justice Whiteside (a staunch upholder of the rights of property) then spoke similarly. In the " Zanzibar " case the Privy Council preferred Mohammedan law to the English law claimed by British subjects in newly-acquired territory (1901, A.C., 373). How the mere grant of a patent can extinguish native rights has never been shown, and Lord Donegall had not as regards possession even a squatter's title.

CHAPTER XLVII.

THE "MISAPPREHENSIONS" OF PARLIAMENT.

However flimsy was the Donegall title to Lough Neagh, it was greatly helped by the theory that the lake must belong to somebody. If the Crown had acted on this view when they annexed the Curragh of Kildare in 1868, they might have saved themselves much trouble in passing an Act of Parliament and providing for the rights of commoners. If there was no "common of piscary" in Lough Neagh, there was no "common of pasture" in the Curragh. For the chief ground on which the claim of the fishermen was denied was that English law prevailed in Ireland, and, by the law of England, a public right to fish, except in the sea or tide-way, cannot exist. The Irish Fishery Acts, however, entirely differentiate the law of the two countries as to this, and recognise in the public a right to fish in inland waters which in England has not received statutory acknowledgment.

The fishery law for Ireland was codified in 1842 by the 5th and 6th Vic. c. 106. This Act repealed all previous fishery Statutes, to the number of twenty-six. It then gave new protections to proprietors of inland waters, coupled with a recognition of existing usages. When originally introduced in the House of Commons the Bill was much objected to, and it was referred to a Select Committee, "very numerous and talented," according to Mr. Longfield, Q.C., M.P. for Mallow. He adds:

"As the result of their protracted labours . . . it afterwards passed through the Committee of the House of Commons, without discussion of any kind, in a few minutes in one Sitting late at night, and with a rapidity which, the

author has been informed, excited the greatest surprise among many English members " (L.F.L., 41).

The Bill had been so altered as entirely to reconcile the contest between the public and riparian owners. Sections 65 and 114 of the Act constitute a complete departure from the law of England, and demolish the theory that decisions in one country, on a different series of Statutes, are any guide to the law of Ireland.

Section 65 provides :

" In the inland and fresh-water portions of rivers and lakes in Ireland no person save the owner of a ' several ' fishery within the limits thereof shall, at any period of the year . . . fish . . . for the taking of salmon or trout, unless in cases where a general public right of fishing for salmon with such nets, in the nature of a common of piscary, has been enjoyed for a space of twenty years next before the passing of this Act."

As originally introduced, this Section contained no provision recognising a " general public right of fishing." The clause first proposed by the Government (then No. 45) was :

" In the inland rivers and lakes of Ireland, or the part or parts thereof wherein no several fishery exists, no person whatsoever shall, at any period of the year . . . fish . . . for the taking of salmon."

The Select Committee changed this by adding the provision for the protection of " public right " and bringing " trout " within the Section.

So determined was Parliament then in the assertion of public right that, even when legislating as to " fixed nets " and " stake nets " in the sea or tidal water, it took the superfluous precaution of adding to Sections 18 and 19 the proviso :

" Saving to the Queen's most excellent Majesty, and all the subjects of this realm, the free and full exercise and enjoyment of all other rights of fishing, or other rights whatsoever, in or along the said sea-shore or coast, etc."

The principal provision in the Act of 1842 dealing with public right was Section 114, and it became law practically

in the shape in which it was introduced by the Government. It defined a "several" fishery as "an exclusive fishery, possessed and enjoyed as such by virtue of grant, Patent, or Charter, or by Act of Parliament, or by prescription;

"And in all rivers or parts of rivers or lakes where the tide does not ebb and flow, and which by law are not deemed public navigable rivers or lakes, and in which no such exclusive fishery as aforesaid shall have been possessed and enjoyed as aforesaid, the proprietors in fee of the adjoining lands shall be considered to be possessed of a 'several' fishery within the bounds and limits of the said lands, or as far as they are seized or possessed of the soil and bed of such rivers or lakes,

"Provided always that nothing herein contained shall be construed to lessen or abridge any public right of fishing by lawful means and in lawful seasons heretofore enjoyed and exercised within the limits of any such 'several' fisheries."

This Section was evidently drawn to exclude all possibility of Lough Neagh being regarded as a private fishery, as the lake was made "navigable" by Statute, and no "exclusive" fishery ever existed therein. Moreover, it only protects "riparian" owners against public user, and Lord Donegall held no lands in some of the counties which are washed by Lough Neagh. His claim was to own the bed and soil of the lake with the water and the fish contained in it. This, if upheld, negatived the right of every riparian owner to fish the Lough, contrary to the principles of English Law.

It is therefore necessary to recall some facts connected with the passing of the Act of 1842. It was a Tory measure introduced by the Chief Secretary for Ireland, Lord Eliot (who in 1853 became Lord Lieutenant of Ireland as Lord St. Germans). It was drawn by the law officers of the Crown (Blackburn, Attorney-General, and Jackson, Solicitor-General). Its provisions were submitted to, and sifted by, the chief men of Ireland of all parties, including Daniel O'Connell and Lalor Shiel, with a special representative of the City of London added to the Select Committee. The names speak eloquently of the calibre of the men who were

afterwards accused of having legislated under a "misapprehension as to the law."

The vast majority represented the landed interest, viz.:

Lord Eliot, Chief Secretary for Ireland.
The Solicitor-General for Ireland.
Mr. Shiel, Dungarvan.
Mr. Daniel O'Connell, Cork.
Sir Edmund Hayes, Donegal.
Sir William Somerville, Drogheda.
Mr. Young, Cavan.
Sir Robert Ferguson, Londonderry.
Captain Jones, Londonderry County.
Mr. Villiers Stuart, Waterford County.
Viscount Courtenay, Devonshire.
Mr. Alexander Murray, Kirkcudbright.
Viscount Adare, Glamorganshire.
Mr. Pigot, Clonmel.
Mr. Redington, Dundalk.
Colonel Conolly, Donegal.
Sir Matthew Wood, London.
Mr. Maurice O'Connell, Tralee.
Viscount Clements, Leitrim.
Mr. Shaw, Dublin University.
Viscount Newry, Newry.
Lord Hillsborough, Down.
Mr. Murphy, Cork City.
Mr. Burke Roche, Cork County.
Mr. Ffolliot, Sligo County.
Mr. Stafford O'Brien, Limerick County.
Sir Thomas Esmond, Wexford County.

It would be difficult to find any mixed tribunal, then or since, so thoroughly representative both of legal principles and of the conflicting claims of territorial ownership and of the general public.

If the result of the deliberations of such a body can be judicially disregarded, it is vain to try to legislate for Ireland.

Another Select Committee of the House of Commons, in 1849 (after the death of Daniel O'Connell) inquired into the working of the Act of 1842. The result was that an

amending measure passed in 1850 (13 and 14 Vic. c. 88, s. 1), which repealed former definitions and provided that :

" The words ' several fisheries ' shall mean and include all fisheries lawfully possessed and enjoyed as such under any title whatsoever, being a good and valid title at law, *exclusively of the public*, by any person or persons, whether in navigable waters or in waters not navigable, and whether the soil covered by such waters be vested in such person or persons, or in any other person or persons."

This definition was expressly framed to conserve public right. It could not injure the common enjoyment of Lough Neagh, which was never fished " exclusively of the public," but, even were it otherwise, a repeal of the definition of 1842 could not prejudice vested right. No English Acts contain provisions like these. They form a distinctive code for Ireland.

Yet the only comment made on them was that of the Irish Lord Chancellor, Sir Samuel Walker : " These Sections do not create a right. There was *a misapprehension* as to the law, and a saving was based on that."

Without this provision in favour of public right the Act never could have passed. Still, it was disregarded as being due to a " misapprehension as to the law " infecting the mind of the Imperial Parliament of Great Britain and Ireland. A burglar might treat the Larceny Acts on this basis ; but that a judge should brush Statute aside suggests that the cant about the law being a " hass " may be elevated to the dignity of a judicial truth. None of the other judges who decided against the fishermen attempted to deal with this statutory difference in the law of the two countries. Sir Samuel Walker, strangely enough, gave effect to the difference as regards pollen. He laid down :

" If this case were conversant with, or included, an alleged exclusive right to take pollen, different considerations would apply, and I express no opinion as to what the result would be in such a case."

The distinction thus drawn between the right to take " pollen " and other fish was afterwards encouraged by two of the Law Lords composing the majority in the House of

Lords. Lord Justice FitzGibbon, however, immediately after Lord Chancellor Walker pronounced judgment, logically demolished it. He said :

" Instances of small *profits à prendre*, enjoyed without title but without interference, are common : gathering windfalls in woods, gleaning corn-land, gathering mushrooms in pasture, or blackberries in hedgerows, seem to me to be analogous to the catching of pollen by the public in Lough Neagh."

This " small *profit à prendre* " represents a catch in Lough Neagh for export alone, of the annual value of £7,100. In 1909 there were issued 70 licences for pollen trammel nets, and 134 for pollen draft nets, for which the annual licence duty was £271. Nine hundred men were employed in, and dependent on, the catching of pollen alone (R.F.D., 1901 and 1909).

It is noteworthy that the Act of 1842 does not legislate against the capture of pollen or eels in the open season. This indicates that in Ireland the public right to take fish other than salmon and trout (styled by Lord Macnaghten " coarse fish ") always existed. " Pollen " were afterwards, by the Acts of 1845 and 1850, comprised within the definition of " salmon " and " trout," but the capture of eels except in " ponds or private canals or reservoirs " (S., 79) was never prohibited by any Irish Statute.

Poaching for salmon or trout was made a criminal offence, and an easy remedy provided, by means of prosecutions at Petty Sessions. Parliament, however, has never stooped to penalise the capture of eels, and merely regulated the methods and seasons and engines for taking them. So this poor man's right in Lough Neagh was left uninvaded and unchallenged until 1907.

CHAPTER XLVIII.

IN THE HOUSE OF LORDS.

Public right having thus been dis-affirmed in the Irish Courts a further appeal was taken by the fishermen to the House of Lords.

There it was twice argued—first in July, 1910, before four Law Lords, namely, Lord Chancellor Loreburn, Lord James, Lord Ashbourne, and Lord Dunedin. After a hearing lasting over a week, the case stood for judgment, but owing apparently to the Law Lords being equally divided, a Court of seven was constituted in January 1911. Lords Halsbury, Macnaghten, Shaw and Robson became additional members, but Lord James did not sit again. Judgment was delivered on the 11th July, 1911, when Lords Halsbury, Macnaghten, and Dunedin confirmed the injunction granted to the plaintiffs—the Lord Chancellor, Lord Shaw, and Lord Robson dissenting. The seventh member of the Court, Lord Ashbourne, held, as to portion of Lough Neagh, that the plaintiffs were entitled to an injunction, but not as to the remainder. Yet by a majority of one, judgment against the existence of any public right is for the moment the result. A curious feature of the decision was that the differences between the Law Lords proceeded on party lines—the three Liberal Peers holding in favour of the public, the four Conservatives against, although it was by Conservative legislation in 1842 that the ancient public right of fishing in Ireland first received statutory recognition.

Lord Halsbury's judgment simply applied the English law to Ireland, without taking any notice of the Irish Fishery Code. Those of his colleagues who agreed with him similarly

ignored it, but as to the pollen fishing Lord Macnaghten said : " I do not think that the result of this appeal, whatever it may be, can affect any question between the pollen fishermen and the claimants to a ' several fishery ' for all kinds of fish, in the whole of the Lough. Pollen fishing is, no doubt, a considerable industry in that part of Ulster. But there is not, I should think, the remotest probability of persons interested in salmon fishing or in eel fishing interfering with it, or with fishing for coarse fish in the Lough. For one thing, it could not pay to interfere. That sort of fishing is an industry that can only be followed with profit by men who toil at it themselves for their daily bread. It cannot be exercised vicariously with any hope of profit or advantage " (A.C., 1911, p. 590).

This reservation is the more remarkable because the Plaintiffs had given evidence of the fact that, contemporaneously with their own attack on the public right of eel-fishing in Lough Neagh, the Crommelins had also been stirred into action, and had, in the same year, 1907, let the " scale " fish (including pollen) at £55 a year. (A.C., 1911, p. 562.) Their lessee would naturally retort on this judgment with the question : " If no public right can exist in inland waters, why encourage pollen-poaching on Lord Shaftesbury's lake ? " For of course if it was justly decided that the fishermen have no right to " toil for their daily bread " on Lough Neagh, it follows that pollen fishing can be put an end to, or permitted only as a privilege for payment. Property in " scale " fish is at least as sacred as that in eels.

The question of the Crown title to Lough Neagh which in 1878 the House of Lords manifestly disbelieved in, was airily disposed of in 1911. In spite of the fact that exhaustive searches negatived the possibility of such title, except in the case of riparian patches of water attached to Monastery fishings under the Antrim Inquisition of 1605, Lord Dunedin declared :

" Mr. Jellett, in his interesting argument, convinced me that although it was impossible to point to any forfeiture which identified the lough, yet it was obviously very probable

that the lough was included in the various territories forfeited to the Crown in the time of the O'Neills. Ross J. took, I think, the same view."

So on a mere speculation as to what was "obviously very probable," the opinions of Lord Cairns, Lord Hatherley, and Lord Blackburn as to the necessity for strictly proving Crown title were set at naught. Instead of it being "obviously very probable" that Lough Neagh as a whole was included in any territory forfeited by the O'Neills, it was legally impossible that this could be true. The date of the grant sufficiently proves this. The first grant was that made by Chichester to himself (in Hamilton's name) in 1605, but the O'Neills, both on the eastern and western shores, were then in full possession of their territories. There was until that year no grant, forfeiture, or legal proceeding in connection with Lough Neagh. Ulster was not subdued until 1603. It follows that the conclusion that the Lough was then the property of the Crown is opposed not only to history and geography, but to common-sense.

The judgment of Lord Macnaghten suggested that "probably there were other Inquisitions" as to Lough Neagh besides those submitted to the House. This is absolutely without foundation. The affidavit of the Plaintiff's archivist negatived their existence, and the official records, proving the contrary, are easy of access and may be found on the shelves of the Library of Parliament.

At the least Lord Cairns knew the history of his province.

In dealing with May's lease Lord Macnaghten's conclusion apparently was arrived at on an inspection of the parchment alone, as he makes no reference to any comparison of it with the "Memorial." He said :

"Perhaps I ought to say a word about May's lease. For my part I think it is a very unimportant document. In Bristow *v.* Cormican an importance was attached to it which I think it did not deserve, apparently because the common expression 'within the known and accustomed limits' of the fishery was supposed to have a mysterious meaning, which I confess I do not quite understand. I do not for a moment suppose that either May or Sir George Hill ever fished or ever

meant to fish in Lough Neagh. The reference to the fishery in Lough Neagh in both these leases had, I think, no other object than the putting on record the claim of the Donegall family to the fishery of Lough Neagh. But when we know that the right or claim of the Donegall family to the several fishery of the whole of Lough Neagh has been asserted openly, and had been the subject of a litigation which lasted for thirty years, just before the date of the lease to May, the notion that there was anything surreptitious connected with May's lease is, I think, not within the region of probability; and the suggestion of forgery, or something like forgery, which was made at the Bar, is, I think, quite unfounded. Your lordships saw this unhappy document. There is writing upon an erasure. This is patent to anyone who looks at the document. But the writing on the erasure is obviously in the same handwriting as the rest of the instrument. In my opinion there is not the slightest ground for supposing that the document was tampered with, after its execution. . . . If, as was suggested by the learned counsel, it was originally a lease of the Bann alone . . . it describes the Bann as being in the County of Tyrone, as well as in Antrim and Londonderry; and I suppose the Bann was never in Tyrone since the days of the Flood" (A.C., 1911, p. 590).

In topography this judgment is sadly at fault. The Bann was always in Tyrone until the seventeenth century. Tyrone was originally "shired" by Deputy Sir William Fitzwilliam on the 10th July, 1591, with the Bann for its eastern boundary, and included what is now Co. Derry. The Inquisition showing this was published by order of Parliament in 1829 (I.I.). In erecting Tyrone into shire-ground Deputy Fitzwilliam followed the boundaries of the O'Neill chiefry, the Bann being made the eastern boundary of the newly created county. The dispute between O'Neill and O'Cahan in 1607 turned on the question whether Tyrone included what is now Co. Derry, and Fitzwilliam's Inquisition supported O'Neill's case. That controversy was historic, for it ended in the Flight of the Earls, the confiscation of Ulster, and the subsequent Plantation.

The northern end of Tyrone was afterwards carved into a separate county, which was at first called Coleraine ; but, as the sound of that name would not melt in harmoniously with the prefix " London " (bestowed on it in honour of the Plantation), the new county was then dubbed " Londonderry." In the Charter of Derry City, dated 10th April, 1662, Charles II. granted " the Barony of Loughinsholin in the said county of Tirone " to the Londoners, and goes on to speak of this part of it as : " Our said County of Tirone, now Londonderry " (C.V., lvii.). When granting the Londoners the Bann, the King describes the River as " in the aforesaid Counties of Antrim, Coleraine, and Tirone, or some of them." This part of their Charter was in evidence before Lord Macnaghten (O'N. *v.* J., 122).

That an Ulster peer should lay down on a matter affecting Anglo-Ulster history (which the case raised) that " the Bann was never in Tyrone since the days of the Flood " is regrettably unhistoric, when the O'Neill title was in issue.

Lord Dunedin also dealt with May's Lease, but likewise ignored the effect of the Memorial. He said :

" It is true that in May's lease the words ' and Lough ' are written on an erasure. That might make the document a bad one if there was a contest upon it at the instance of the lessee against the lessor. But I confess I do not understand the theory of a forgery. Who was to forge ? Surely not Lord Donegall, whose own title from the Crown had clearly the Lough included. May might conceivably forge in order to enlarge his grant ; but I should have thought that he could scarcely hope to escape detection. On the whole, I think the theory of a clerk who had written the words wrong and did not wish to be chided, or to have to buy a new sheet of parchment, is a conjecture much more likely to be near the truth. Anyway there is no erasure in Hill's lease, and the fact is that he was content to pay money for what the Donegalls assumed to give, namely, *inter alia*, fishing in the Lough. Besides this, there is the uninterrupted repetition of the right in the Donegall Settlements. By itself this is not much. But at least it shows a continued belief in the family that the fishing was theirs " (p. 596).

On the same materials another Law Lord arrived at a wholly opposite conclusion.

Lord Shaw declared :

" In the proceedings in the Court in Ireland, and in this House in the present case, the lease to Edward May of October 1st, 1803, was produced. In view of the language of these great judges [Cairns, Hatherley, and Blackburn] which I have just cited, I do not feel myself free to disregard or to attach anything but a high value and significance to, May's lease. Indeed, I have thought it right personally and carefully to examine that parchment document ; and I will now state the result of that examination. It is docketed thus :

" 'A Memorial of the within deed was entered in the Registry Office in the City of Dublin, the 30th day of August, 1805, at half an hour after eleven o'clock, in book 572, page 145, No. 386,629, and the execution of the said deed and Memorial was duly proved, pursuant to an Act of Parliament in that case made and provided.'

" That Memorial is also produced. It bears to be a memorial of the indenture of October 1st, 1803, between the Marquis of Donegall and Edward May, to the effect that the Marquis ' did demise and set unto the said Edward May, his executors, administrators and assigns, all that the Salmon Fishery and soil of the River Bann, with full right and liberty of taking and carrying away and exporting of salmon fish ' ; and with full power ' of going to the bank of the said river and every part thereof ' ; and of laying nets thereon. It is plain that the Memorial bears to have nothing to do with Lough Neagh ; and it would seem to be quite as plain that the Deed, of which it is a Memorial, has nothing to do with Lough Neagh.

" I now proceed to see what is the demise in the parchment lease of October 1st, 1803, itself. It is not a demise of ' the salmon fishery and soil of the River Bann,' as the Memorial bears it to have been. I am humbly of opinion that it was so originally ; but erasures have been made upon the parchment, and the space upon erasure is thus filled up. The words now appearing are ' the salmon, trout, and scale

fisheries of Lough Neagh, and the River Bann,' instead of, as I have said, ' the salmon fishery and soil of the River Bann.' A few words further on in the parchment ' the liberty of taking and carrying away and exporting of salmon fish ' contains the erasure of the word ' salmon ' and the writing in of the word ' such.' This squares with the writing over the first erasure before-mentioned. And when the ' power and liberty of going to the banks ' is mentioned, whereas, in the Memorial, the lease was said to have contained a ' power and liberty of going to the bank of the said river,' erasures again occur, and instead of ' said river,' it is ' said lough and river.'

" Other changes, by interlineation and upon erasure, also occur—all of them of such a kind as to transform the text of the Deed from what it manifestly had originally been, as stated in the Memorial, into a new and vastly greater grant. Not one of these alterations is authenticated.

" I have very anxiously, indeed, considered these revelations, and I am bound to say quite plainly that the description of the property which is the subject of demise and liberty contained in the parchment deed produced and founded on is, to the best of my judgment, a *forged* description. With some experience of scrutinising documents and caligraphy, I do not feel myself able to affirm the identity of the handwriting of the alterations with that of the text. Whether there was this identity or not, the changes made were not, in my opinion, mere slips or blunders—this would be so curious as to be almost incredible—and the slips or blunders have manifestly stupendous significance. I cannot hold that such a Deed can ' make faith in judgment.' The effect of the alterations is to include, within the subject of demise, general fishing rights in a Lough of 100,000 acres in extent, in addition to what was the real and only subject of demise, namely : the salmon fishery in the River Bann. My humble opinion is that the lease of 1803 was a lease of the river alone. . . . The Deed in its mutilated condition, I think, demonstrates that May held no portion of Lough Neagh whatever."

Lord Robson's judgment pointed out the repugnances which would be created if the genuineness of May's lease of

1803 were accepted. He showed that lettings to other "tenants" of Lough Neagh—of which May was supposed to be the sole Lessee—were alleged to have been made after 1803, and that the subsequent entries were irreconcilable with the lease.

Notwithstanding this, Lord Macnaghten relied on three of these entries as powerful evidence of title. A short account of the alleged lettings must therefore be given.

For nearly half a century after Lord Donegall became entitled to the reversion on the expiry of Clotworthy's lease, there was no "act of ownership" by him as to Lough Neagh. The earliest evidence thereof submitted at the trial occurs in a Donegall Rental of 1797, when a trivial letting is recorded. Including that letting the entire of the entries in the Donegall ledger as to payments of rent by tenants of Lough Neagh relied on in 1907 as evidence, number six. These are confined to a period of ten years, and relate only to four persons :

Anthony Blizzard, fishery of Lough Neagh, Kilmakevit to Bann foot, 1797, - -	£3	8	3
Hyland Langford, fishery of Lough Neagh, Gartrey Point to Tunny Point, including Ram's Island, 1800, - - -	7	10	0
Samuel Fineston, part of Lough fishery, 1801, - - - - - -	7	10	0
Joseph Mackay, fishery of Lough Neagh, 1800-2, - - - - - -	6	0	0
Samuel Fineston, part of Lough fishery, 1807, - - - - - -	7	10	0
Hyland Langford, fishery of Lough Neagh, 1807, - - - - - -	7	10	0
Total, - -	£39	8	3

These entries Lord Justice FitzGibbon (who otherwise declared in Plaintiff's favour) spoke of as "Peculiar entries in 1800, 1801, 1807, and other years, of occasional payments for 'Lough fishings.' These latter are small in amount, occasional, and in a sense suspicious."

This stinted tale of " acts of ownership " being accounted " suspicious," the Plaintiffs eked it out by printing a further list of lettings, after the case had been heard in the House of Lords in 1910, on its being set down for re-argument in 1911. This was even less impressive.

Of those originally relied upon to secure the decision of the Irish Courts, only one was made to a resident beside Lough Neagh, and not even one of the supposed tenants was a fisherman or farmer. They were either employees of the Donegall rent office or servants of the " Donegall interest." Although members of the Yeomanry, they were obnoxious to their Protestant neighbours. The Blizzards were in the employ of the Donegalls for generations (O.B.). Fineston was the retainer who betrayed Rody Macorley, hanged on the Bridge of Toome in 1798. The hatred he provoked persisted even after death, and Fineston's grave in Cranfield was long the object of public defilement.

No " tenant " was pretended to have held on for two years running. The " lettings " simply indicated a scheme to acquire a foothold on Lough Neagh through local servitors ; and its breakdown. Indeed, against Blizzard's entry the word " surrendered " appears in the Rental.

To these four dependents Lord Donegall tried to add two personages less servile, but the Rental shows that he failed to extract rent from either. They were the Earl of Hertford and John O'Neill, M.P. for Antrim. Under date 1775 the Rental contains two entries : " John O'Neill—Shane's Castle fishing " and " Earl of Hertford—fishing of Portmore Strands."

The entry as to Lord Hertford is repeated in the Ledger of 1783, but not that as to O'Neill. In the eight years between 1775 and 1783 O'Neill, as a possible " tenant," had been given up by Lord Donegall as hopeless. But there was still the prospect that a careless absentee like Lord Hertford might be cajoled into acknowledging the Donegall title to Lough Neagh. After 1783, however, hope even of Lord Hertford was abandoned, and neither he nor John O'Neill appears more in the Donegall Rental. No amount for rent due, was noted in either case. These two entries, therefore,

point plainly to pretenced " tenancies " of fishings in Lough Neagh. And who were the alleged " tenants " ?

John O'Neill succeeded his father, Charles O'Neill, in Shane's Castle (or Edenducarrig) in 1769. He was made a viscount in 1795, and, like his father, was one of the best known men of his day. Lord Hertford was another important local proprietor. Both Earl and Viscount owned lands abutting on Lough Neagh. The Donegall Ledger thus proves that a claim for rent of Lough fishings was made on both magnates, and that each declined to acknowledge Lord Donegall's title. As they would pay him nothing, it is evident that two estated gentlemen, who could not be frightened by the threat of proceedings, refused attornment to his pretensions. Naturally Lord Justice FitzGibbon treated as " suspicious " a rental which exhibited that four underlings temporarily recognised Lord Donegall's claims, but that the rest of the world rejected them.

The supplementary list put forward in 1911 at the rehearing in the House of Lords, alleged that four boatmen, plying on the strand at Shane's Castle (after the failure to extract rent from Lord O'Neill), were charged 30s. a year from 1788 to 1797, under the heading " Lough Neagh," but no person definitely liable was named. There was a similar entry for 1807. Two new " tenants " only were introduced.

Francis Barnes figured for " part of fishery of Lough Neagh for three half-years in 1801-2," at £7 10s., when he " surrendered," and James Verner was named as holding, in 1801 and 1807, " part of Lough Neagh fishery, from M'Kenny's Point to the Blackwater foot," at £8 1s. 4½d. A third person, entered already for 1800-2 (J. Mackay), reappears in 1807.

Such was the meagre total of alleged lettings by the Donegalls from 1755 to 1807.

Lord Chancellor Loreburn analysed the insignificance of the " tenancies " of these six casuals, as compared with the unbroken record of public right for centuries, and refused to set them in the balance against that continuous, open, and unchallenged user. Lord Macnaghten, however, was impressed by three of the entries, viz. those concerning

Blizzard, Verner, and Langford. The first two he held " represented a fishing in the County of Armagh, and go some way to show that the claim to a several fishery in County Armagh was a real and substantial claim, which the jurors of the County, in the case of ' Donegall *v.* Hamilton ' [relating to the trespass at the Salmon Leap in 1788], must have known perfectly well."

That relating to Hyland Langford, he declared to be " one of the most important entries produced in evidence." He held it to afford proof that " Ram's Island, to which the title was originally the same as the soil of Lough Neagh, was then in the possession of the Donegall family " ; and that it " actually was let with the fishery in 1800." Were this correct, why were no previous or subsequent letting of Ram's Island proved ?

Since the year 1606, when the " great Deputy " made a Langford, gate porter in Carrickfergus Castle, his descendants had been connected with the Donegall interest. Ram's Island is a large one, nearly 26 acres in extent—although the Cromwell-Clotworthy lease lyingly alleged that Ram's Island and Coney Island together only " contain three acres of ground." (Coney Island alone contains nearly 5 acres.) A letting of land does not occur, like the blossomimg of an aloe, once in a hundred years. The entry evidenced a letting of the 26 acres of Ram's Island in 1800 for that year only, and why should the tenant, who then paid £7 10s. for " the fishery of Lough Neagh, including Ram's Island," consent in 1807 to pay £7 10s. for the fishing without the island ?

This Rental, moreover, furnishes a destructive argument against the trustworthiness of the lease to May. That document alleges that Edw. May was given a demise of the Lough ; but if a lease of the entire Lough had been made to him in 1803, parts of the Lough could not have been let to Langford, Fineston and Verner in 1807. The Rental shows lettings of " part of Lough fishery " to Samuel Fineston, of " part of Lough fishery " to James Verner, and of " the fishery of Lough Neagh " to Hyland Langford in that year at various rents. This would have been impossible if the " entire

Lough " had been let to Edward May in 1803, as the " revised version " of May's lease alleged. No payment of rent by Edward May is anywhere recorded, nor is his name entered in the Rental as a tenant, either for Lough Neagh or for the Bann or the islands. So insuperable was this difficulty felt to be that Lord Macnaghten held " that the reference to the fishery in Lough Neagh [in May's and Hill's leases] had no other object than the putting on record of the claim of the Donegall family to the fishery of Lough Neagh " !

That is to say, although Lough Neagh is pretended to have been leased to May in 1803, he, as agent of the estate and mortgagee, allowed Lord Donegall to make money by letting it to other persons. This does not accord with the known habits of tenants anywhere, even though they be brother-in-law, mortgagee and agent of the lessor.

The theory that Lord Donegall could, by privately making such a lease, strengthen his claim against the public, provokes the question, How could the public know aught of this Lease ? On the only occasion when its production was vital (1878) the House of Lords failed to secure a glimpse of it. Yet in 1911 Lord Macnaghten suggests that it was made with " no other object than to put on record the claim of the Donegall family to the fishery of Lough Neagh." Such a " record " was apparently too sacred to be exposed to the sight of the generation of legists to which Lord Chancellor Cairns, Lord Hatherley, and Lord Blackburn belonged. It was doubtless preserved to convince the jurists of the twentieth century of the blunders of the sceptics of the nineteenth.

The case of Coney Island, the second plot in the Lough, was left out of consideration altogether. No lettings there could be proved. Both islands, for 150 years, should have been held or let by Lord Donegall, if he were the landlord. Nothing would have been easier to prove than such ownership if it existed. Still, one dubious entry mentioning Ram's Island was allowed to overbalance the absence of all others as to the land, while as to the water, half a dozen lettings to underlings outweighed an otherwise unbroken history of public enjoyment. Thus was the scale of justice tilted beyond beam.

CHAPTER XLIX.

THE LAST APPEAL.

It now only remains to present corroborative proofs of the forgery of May's lease of 1803, which came to light as the result of searches in the Registry of Deeds, after the foregoing pages had been written. No judge could have been persuaded to treat that grant as genuine, had the fact been known that on the 1st February, 1809, May really got from Lord Donegall a lease of the scale fish in Lough Neagh and the Bann, which it was pretended he had received six years before, and for the same term of sixty-one years.

The notion of a previous lease to him of the same fisheries, on the same terms and for the same period, would have been deemed too absurd to be entertained. The discovery of the existence of the grant of 1809, therefore, seems decisive on the issue of forgery in the lease of 1803.

The Memorial of the 1809 Lease (registered 22nd February, 1809) runs :

" 415421

" Memorial of an indented lease bearing date the 1st February 1809, whereby the Marquis of Donegall did demise and set unto Edward May the Younger, of Belfast, in the County of Antrim,

" All that the salmon, trout, and scale fish of Lough Neagh and the River Bann, with liberty of taking and carrying away and exporting of all such fish, with the appurtenances to the said fishing belonging in the County of Tyrone, Antrim, and the Liberties of Coleraine, together with full power of going to the banks of said Lough and River within the aforesaid limits, and of laying thereon nets for fishing, together

with all weirs, dams, watercourses, and appurtenances to the said fishery belonging.

"To hold unto the said Edward May, his executors, administrators and assigns, for and during the term of 61 years, to commence the 1st May next ensuing the date of these presents, subject to the yearly rent of £50 sterling, to be paid half-yearly, which lease contains the clauses and covenants common and usual between landlord and tenant,

"And this lease, together with the Memorial, is witnessed by Hugh Kirk, of Belfast, Notary Public, and John Alexander, of same place, Clerk.

"EDWARD MAY."

(Seal).

Had this document been before the House of Lords, two of its members would hardly have insisted with so much force, that the grant in the lease of 1803 was genuinely made by Lord Donegall. What then was the motive for the forgery? It is to be deduced from the fact (in itself inexplicable) that May's assignment of the fishery to Sir George Hill in 1811 is linked by recital with the lease of 1803, while its terms are based on that of 1809. This appears from the Memorial of the assignment (registered 8th November, 1811), which makes no reference to the lease of 1809, but recites that of 1803. This Memorial evidences that "in consideration of £500 in hand paid," May granted to Hill

"All that and those the salmon trout and scale fisheries of Lough Neagh and the River Bann, with liberty of taking and carrying away and exporting of such fish with the appurtenances, in the Counties of Tyrone, Antrim, and Liberties of Coleraine, and in the precincts thereof.

"Together with full power of going to the banks of said Lough and River, and every part thereof, within the aforesaid limits; to hold unto the said Sir G. F. Hill or his executors, administrators and assigns, for and during all the rest, residue and remainder of the term of 61 years, commencing from the 1st November, 1802,

"Subject to the yearly rent of £50, payable thereout to the Marquis of Donegall, his heirs and assigns, reserved and

made payable thereout under a certain indenture of demise of said premises to the said Edward May, bearing date the 1st October, 1803."

It is impossible to explain this by any theory consistent with ordinary procedure, unless May desired to keep in his family the six years term which would remain after the expiry of Hill's lease. It, however, clearly explains the reason for the forgery. That reason is not far to seek. For May's lease of 1803—not that of 1809—governed the construction of four others (Hill's, Wallace's, O'Neill's and Crommelin's), so its mutilation infused a wholly different meaning into the subsequent grants. To tamper with it meant their transformation in value and extent, without any change being made in their own phraseology. This affords answer to Lord Dunedin's question, and is the proof that his own solution of the crux was unavailing.

He asked : " Who was to forge ? " and treated the riddle as insoluble by those who alleged malpractice.

We now know that in 1811 the Reverend Edward May purported, under his lease of 1803, to assign to Sir George Hill a fishery greater in extent and character than he possessed under that lease. The blunder being made, and probably only having been discovered long afterwards, it was " rectified " by manipulation of the 1803 lease by some one connected with the subsequent Lessees, whose grants depended in extent on its terms. May's first lease had been incorporated by reference in theirs and fettered their interpretation. Motive, therefore, was not lacking to stimulate the furtive skill of tamperers.

The Lease of 1809, strange to say, was never referred to in the forty years over which the litigation extended. Such a lease, or a document alleged to be such, must, of course, have been presented to the Registrar of Deeds in 1809. If it was a veritable instrument, it is very odd that it has never more been heard of. Lord Donegall, in 1811 and 1829, and his successor in 1857, coupled their grants with May's lease of 1803, and not with that of 1809. What dead hand or buried brain contrived the mutilation of the lease of 1803 we are no nearer to knowing.

Lord Macnaghten, in deciding that there had been no forgery, described the lease of 1803 as "a very unimportant document." Still it is probable that, as a sample of the discredited material on which the House of Lords consented to act, the Lease to May will not readily be lost to legal memory. Although the judges, who attached weight to it, merely exercised the functions of common jurors, that fact does not lessen the gravity of the consequences of a judicial recognition of a tainted instrument.

The case was one in which the Law Lords stood three to three on a question which undermined a previous unanimous decision of their Lordships House. There is, therefore, a crumb of comfort in the fact that the Peer upon whose vote the actual result turned, Lord Ashbourne, abstained from lending the weight of his experience, as an Irish Lord Chancellor of seventeen years' standing, to any endorsement of the Lease of 1803, or to casting doubt upon the processes of the Registration of Deeds. His silence on these issues was made more significant by his refusal to join Lord Macnaghten in holding that an isolated entry in the Donegall Rental proved a "several" fishery in the Armagh portion of Lough Neagh in the eighteenth century, or that the rest of the evidence warranted an injunction for the entire of Lough Neagh. Yet the entire lake was what May's lease of 1803 purported to grant.

Lord Ashbourne bluntly laid down that "the judgment goes too far in holding the right claimed, to be established in respect of the entire area of Lough Neagh." When the question of affirming or reversing the ruling of Mr. Justice Ross was put to the vote, he was, however, reminded by the Lord Chancellor that only one issue was before the House, *i.e.* Whether the Plaintiff had proved a fishery in the entire of Lough Neagh, or had no title thereto. So Lord Ashbourne was finally counted as voting with the majority.

Thus was recorded a judgment which vests in private hands the last piece of ancient property left to the enjoyment of the public by the British occupation of Ireland. When the Curragh of Kildare was seized by the Government in 1868 (31 and 32 V. c. 60), there was the excuse of military con-

venience ; but with the Curragh Act disappeared the only free scope of ground dedicated to the use of the general population from storied times. Now the water has gone with the land, and the embargo on Lough Neagh deprives the public of the profit of their greatest lake, in behoof of private individuals. All this, of course, was accomplished in the name of that Imperial justice of which it is boasted that it assures an even scale to the conquered and the conqueror alike.

To toil for one's daily bread in a perilous and precarious calling is no enviable birthright. Since the world was young this craft had been freely plied by the 'longshoremen of Lough Neagh. The right to exercise it they defended at the Seats of the Mighty, only to find that the law rejected their claim to earn a livelihood. To be bereft of one's living, and see a scanty patrimony decreed to strangers, is ill to bear, but the blow is made harder when the pretext for confiscation is alleged to be some musty letter from Cromwell, or a reckless " fairing " of the worthless Stuarts. Well may it be asked why the welfare of the fishermen of five counties should count as naught against the parchments of bygone rascaldom ?

Precedents from olden Conquests support no such system of confiscation. Under the Roman occupation of Judea no injunction issued to deprive the Hebrews of their fisheries. Of the custom of the Lakes of Galilee and Genesareth there is evidence to go to a jury, that the local tribesmen could betimes let down their nets for a draught. Nor is there mention of Letters Patent by Pontius Pilate or Herod to filch the river Jordan into their own hands. Perchance the march of civilisation was slower then, and the appeal to Caesar more speedy, or it may be that gentry who grudge the rude means of subsistence to the humble, are not bred in high-caste races.

So the freebooter who robbed the Earls of Ulster, three hundred years ago, again triumphed in the award which enables his descendants to doom to destruction a remnant of the people he hated. Thus the Flight of the Earls is sadly sequelled in the twentieth century. At the moment, of

course, the hand of oppression is withheld from smiting for the hour to strike must be warily timed. The fisherfolk are as yet too strong in their wretchedness—too great in their despair. It will not, however, be pretended that an expensive litigation has been maintained, and judgment invoked, without purposeful design against them.

Hence is this story told. May it appear by what it offers, that the cause of justice is no lost cause, and that riches and power and law are in vain brigaded against the common weal. Perhaps when the truth is known, pity may be moved, or statesmen stirred to rescue the forlorn.

The fishermen of the North are but a friendless company. Still, the tale of their undoing has a prelude which pierces to the marrow of Irish history. It has also a living import. For their sake it is that one whose eyes have never looked upon Lough Neagh, has "written these lines and taken these pains."

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